This electronic text represents the Commission's current Enforcement Policy as last modified by a revision published in the *Federal Register* on January 14, 2005, that extends the interim Enforcement Policy regarding enforcement discretion for certain issues involving fire protection programs at operating nuclear power plants. This electronic text is offered as a convenience because the Enforcement Policy is often revised without being reissued as a NUREG series publication. The last NUREG was published as NUREG-1600, May 1, 2000.

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

Table of Contents

Preface

I. INTRODUCTION AND PURPOSE

II. STATUTORY AUTHORITY AND PROCEDURAL FRAMEWORK
- A. Statutory Authority
- B. Procedural Framework

III. RESPONSIBILITIES

IV. SIGNIFICANCE OF VIOLATIONS
- A. Assessing Significance
  - 1. Actual Safety Consequence
  - 2. Potential Safety Consequence
  - 3. Impacting the Regulatory Process
  - 4. Willfulness
  - 5. Significance Determination Process
- B. Assigning Severity Level

V. PREDECISIONAL ENFORCEMENT CONFERENCES

VI. DISPOSITION OF VIOLATIONS
- A. Non-Cited Violation
  - 1. Power Reactor Licensees
  - 2. - 7. [Reserved]
  - 8. All Other Licensees
- B. Notice of Violation
- C. Civil Penalty
  - 1. Base Civil Penalty
  - 2. Civil Penalty Assessment
    - a. Initial Escalated Action

b. Credit for Actions Related to Identification
c. Credit for Prompt and Comprehensive Corrective Action
d. Exercise of Discretion
D. Orders
E. Related Administrative Actions

VII. EXERCISE OF DISCRETION
A. Escalation of Enforcement Sanctions
1. Civil Penalties
2. Orders
3. Daily Civil Penalties
B. Mitigation of Enforcement Sanctions
1. [Reserved]
2. Violations Identified During Extended Shutdowns or Work Stoppages
3. Violations Involving Old Design Issues
4. Violations Identified Due to Previous Enforcement Action
5. Violations Involving Certain Discrimination Issues
6. Violations Involving Special Circumstances
C. Notice of Enforcement Discretion for Power Reactors and Gaseous Diffusion Plants

VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS

IX. INACCURATE AND INCOMPLETE INFORMATION

X. ENFORCEMENT ACTION AGAINST NON-LICENSEES

XI. REFERRALS TO THE DEPARTMENT OF JUSTICE

XII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

XIII. REOPENING CLOSED ENFORCEMENT ACTIONS

SUPPLEMENTS - VIOLATION EXAMPLES

INTERIM ENFORCEMENT POLICIES

Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material (10 CFR 31.5)

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fitness-for-Duty Issues (10 CFR Part 26)

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

Interim Enforcement Policy Regarding the Use of Alternative Dispute Resolution

PREFACE

The following policy statement describes the enforcement policy and procedures that the U.S. Nuclear Regulatory Commission (NRC or Commission) and its staff intends to follow in initiating and reviewing enforcement actions in response to violations of NRC requirements. This statement of general policy and procedure is published as NUREG-1600 to foster its widespread dissemination. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy as appropriate under the circumstances of a particular case.

I. INTRODUCTION AND PURPOSE

The Atomic Energy Act of 1954, as amended, establishes "adequate protection" as the standard of safety on which NRC regulations are based. In the context of NRC regulations, safety means avoiding undue risk or, stated another way, providing reasonable assurance of adequate protection of workers and the public in connection with the use of source, byproduct and special nuclear materials.

While safety is the fundamental regulatory objective, compliance with NRC requirements plays an important role in giving the NRC confidence that safety is being maintained. NRC requirements, including technical specifications, other license conditions, orders, and regulations, have been designed to ensure adequate protection -- which corresponds to "no undue risk to public health and safety" -- through acceptable design, construction, operation, maintenance, modification, and quality assurance measures. In the context of risk-informed regulation, compliance plays a very important role in ensuring that key assumptions used in underlying risk and engineering analyses remain valid.

While adequate protection is presumptively assured by compliance with NRC requirements, circumstances may arise where new information reveals that an unforeseen hazard exists or that there is a substantially greater potential for a known hazard to occur. In such situations, the NRC has the statutory authority to require licensee action above and beyond existing regulations to maintain the level of protection necessary to avoid undue risk to public health and safety.

The NRC also has the authority to exercise discretion to permit continued operations -- despite the existence of a noncompliance -- where the noncompliance is not significant from a risk perspective and does not, in the particular circumstances, pose an undue risk to public health and safety. When noncompliance occurs, the NRC must evaluate the degree of risk posed by that

noncompliance to determine if specific immediate action is required. Where needed to ensure adequate protection of public health and safety, the NRC may demand immediate licensee action, up to and including a shutdown or cessation of licensed activities.

Based on the NRC's evaluation of noncompliance, the appropriate action could include refraining from taking any action, taking specific enforcement action, issuing orders, or providing input to other regulatory actions or assessments, such as increased oversight (e.g., increased inspection). Since some requirements are more important to safety than others, the NRC endeavors to use a risk-informed approach when applying NRC resources to the oversight of licensed activities, including enforcement activities.

The primary purpose of the NRC's Enforcement Policy is to support the NRC's overall safety mission in protecting the public health and safety and the environment. Consistent with that purpose, the policy endeavors to:

- Deter noncompliance by emphasizing the importance of compliance with NRC requirements, and

- Encourage prompt identification and prompt, comprehensive correction of violations of NRC requirements.

Therefore, licensees,[1] contractors,[2] and their employees who do not achieve the high standard of compliance which the NRC expects will be subject to enforcement sanctions. Each enforcement action is dependent on the circumstances of the case. However, in no case will licensees who cannot achieve and maintain adequate levels of safety be permitted to continue to conduct licensed activities.

---

[1]This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. However, this policy provides for taking enforcement action against non-licensees and individuals in certain cases. These non-licensees include contractors and subcontractors, holders of, or applicants for, NRC approvals, e.g., certificates of compliance, early site permits, or standard design certificates, and the employees of these non-licensees. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VIII and X, respectively.

[2]The term "contractor" as used in this policy includes vendors who supply products or services to be used in an NRC-licensed facility or activity.

II. STATUTORY AUTHORITY AND PROCEDURAL FRAMEWORK

A. Statutory Authority

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended.

Section 161 of the Atomic Energy Act authorizes the NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes the NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of an NRC regulation). Section 234 authorizes the NRC to impose civil penalties not to exceed $100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes the NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes the NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Notwithstanding the $100,000 limit stated in the Atomic Energy Act, the Commission may impose higher civil penalties as provided by the Debt Collection Improvement Act of 1996. Under the Act, the Commission is required to modify civil monetary penalties to reflect inflation. The adjusted maximum civil penalty amount is reflected in 10 CFR 2.205 and this Policy Statement.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal penalties (i.e., monetary fines and imprisonment) for willful violations of the Act and regulations or orders issued under sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who interfere with inspectors. Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

B. Procedural Framework

Subpart B of 10 CFR Part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing Notices of Violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the civil penalty process is initiated by issuing a Notice of Violation and Proposed Imposition of a Civil Penalty. The licensee or other person is provided an opportunity to contest the proposed imposition of a civil penalty in writing. After evaluation of the response, the civil penalty may be mitigated, remitted, or imposed. An opportunity is provided for a hearing if a civil penalty is imposed. If a civil penalty is not paid following a hearing or if a hearing is not requested, the matter may be referred to the U.S. Department of Justice to institute a civil action in District Court.

The procedure for issuing an order to institute a proceeding to modify, suspend, or revoke a license or to take other action against a licensee or other person subject to the jurisdiction of the Commission is set forth in 10 CFR 2.202. The licensee or any other person adversely affected by the order may request a hearing. The NRC is authorized to make orders immediately effective if required to protect the public health, safety, or interest, or if the violation is willful. Section 2.204 sets out the procedures for issuing a Demand for Information (Demand) to a licensee or other person subject to the Commission's jurisdiction for the purpose of determining whether an order or other enforcement action should be issued. The Demand does not provide hearing rights, as only information is being sought. A licensee must answer a Demand. An unlicensed person may answer a Demand by either providing the requested information or explaining why the Demand should not have been issued.

III. RESPONSIBILITIES

The Executive Director for Operations (EDO) and the principal enforcement officers of the NRC, the Deputy Executive Director for Reactor Programs (DEDR)and the Deputy Executive Director for Materials, Research and State Programs (DEDMRS) have been delegated the authority to approve or issue all escalated enforcement actions.[3] The DEDR is responsible to the EDO for NRC enforcement programs. The Office of Enforcement (OE) exercises oversight of and implements the NRC enforcement program. The Director, OE, acts for the Deputy Executive Director in enforcement matters in his absence or as delegated.

---

[3]The term "escalated enforcement action" as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem); a Notice of Violation associated with an inspection finding that the Significance Determination Process evaluates as having low to moderate, or greater, safety significance (i.e., white, yellow, or red); or any order based upon a violation.

Subject to the oversight and direction of OE, and with the approval of the Deputy Executive Director, where necessary, the regional offices normally issue Notices of Violation and proposed civil penalties. However, subject to the same oversight as the regional offices, the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) may also issue Notices of Violation and proposed civil penalties for certain activities. Enforcement orders are normally issued by the Deputy Executive Director or the Director, OE. However, orders may also be issued by the EDO, especially those involving the more significant matters. The Directors of NRR and NMSS have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions not associated with compliance issues. The Chief Financial Officer has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection fees.

In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of this penalty, after considering the general principles of this statement of policy and the significance of the violations and the surrounding circumstances.

Unless Commission consultation or notification is required by this policy, the NRC staff may depart, where warranted in the public's interest, from this policy as provided in Section VII, "Exercise of Discretion."

The Commission will be provided written notification for the following situations:

(1) All enforcement actions involving civil penalties or orders;

(2) The first time that discretion is exercised for a plant that meets the criteria of Section VII.B.2;

(3) (Where appropriate, based on the uniqueness or significance of the issue) when discretion is exercised for violations that meet the criteria of Section VII.B.6; and

(4) All Notices of Enforcement Discretion (NOEDs) issued involving natural events, such as severe weather conditions.

The Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating against the potential radiological or other hazards associated with continued operation (cases involving severe weather

or other natural phenomena may be addressed by the NRC staff without prior Commission consultation in accordance with Section VII.C);

(2) Proposals to impose a civil penalty for a single violation or problem that is greater than 3 times the Severity Level I value shown in Table 1A for that class of licensee;

(3) Any proposed enforcement action that involves a Severity Level I violation;

(4) Any action the EDO believes warrants Commission involvement;

(5) Any proposed enforcement case involving an Office of Investigations (OI) report where the NRC staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and

(6) Any proposed enforcement action on which the Commission asks to be consulted.

IV. SIGNIFICANCE OF VIOLATIONS

Regulatory requirements[4] have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance or significance of each violation is assessed as the first step in the enforcement process.

A. Assessing Significance

In assessing the significance of a noncompliance, the NRC considers four specific issues: (1) actual safety consequences; (2) potential safety consequences, including the consideration of risk information; (3) potential for impacting the NRC's ability to perform its regulatory function; and (4) any willful aspects of the violation.

For certain types of violations at commercial nuclear power plants, the NRC relies on information from the Reactor Oversight Process's Significance Determination Process (SDP). The SDP is used to evaluate the actual and potential safety significance of inspection findings to provide a risk-informed framework for discussing and communicating the significance of inspection findings. Violations associated with findings evaluated through the SDP are addressed in Section IV.A.5. Violations at commercial nuclear power plants that are associated with inspection findings that *cannot* be evaluated through the SDP (i.e., violations that may impact the NRC's ability for oversight of licensed activities and violations that involve willfulness, including discrimination) are evaluated in accordance with the guidance in Sections IV.A.1 through IV.A.4 and Section IV.B. Violations that are associated with inspection

[4]The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

findings with actual consequences are evaluated in accordance with the guidance in Section IV.A.5.c.

1. Actual Safety Consequences. In evaluating actual safety consequences, the NRC considers issues such as actual onsite or offsite releases of radiation, onsite or offsite radiation exposures, accidental criticalities, core damage, loss of significant safety barriers, loss of control of radioactive material or radiological emergencies. (See Section IV.A.5.c for guidance on violations that are associated with SDP findings with actual consequences.)

2. Potential Safety Consequences. In evaluating potential safety consequences, the NRC considers the *realistic* likelihood of affecting safety, i.e., the existence of credible scenarios with potentially significant actual consequences. The NRC will use risk information wherever possible in assessing significance and assigning severity levels. A higher severity may be warranted for violations that have greater risk significance and a lower severity level may be appropriate for issues that have low risk significance. Duration is an appropriate consideration in assessing the significance of violations.

3. Impacting the Regulatory Process. The NRC considers the safety implications of noncompliances that may impact the NRC's ability to carry out it statutory mission. Noncompliances may be significant because they may challenge the regulatory envelope upon which certain activities were licensed. These types of violations include failures such as: failures to provide complete and accurate information, failures to receive prior NRC approval for changes in licensed activities, failures to notify NRC of changes in licensed activities, failure to perform 10 CFR 50.59 analyses, reporting failures, etc., Even inadvertent reporting failures are important because many of the surveillance, quality control, and auditing systems on which both the NRC and its licensees rely in order to monitor compliance with safety standards are based primarily on complete, accurate, and timely recordkeeping and reporting. The existence of a regulatory process violation does not automatically mean that the issue is safety significant. In determining the significance of a violation, the NRC will consider appropriate factors for the particular regulatory process violation. These factors may include: the significance of the underlying issue, whether the failure actually impeded or influenced regulatory action, the level of individuals involved in the failure and the reasonableness of the failure given their position and training, and whether the failure invalidates the licensing basis. Factors to consider for failures to provide complete and accurate information are addressed in Section IX of this policy.

Unless otherwise categorized in the Supplements to this policy statement, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event that it failed to report. A licensee will, on the other hand, normally be cited for a failure to

report a condition or event if the licensee knew of the information to be reported, but did not recognize that it was required to make a report.

4. Willfulness. Willful violations are by definition of particular concern to the Commission because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by either the Commission or a licensee. Therefore, a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness. The term "willfulness" as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., negligence or inadvertent clerical errors in a document submitted to the NRC. In determining the significance of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g., licensee official[5] or non-supervisory employee), the significance of any underlying violation, the intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the significance assessment will be dependent on the circumstances of the violation. However, if a licensee refuses to correct a minor violation within a reasonable time such that it willfully continues, the violation should be considered at least more than minor. Licensees are expected to take significant remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization.

5. Significance Determination Process. The Reactor Oversight Process uses a Significance Determination Process (SDP) to determine the safety significance of most inspection findings identified at commercial nuclear power plants. Depending on their significance, inspection findings are assigned colors of green, white, yellow, or red. The Reactor Oversight Process uses an Agency Action Matrix to determine the appropriate agency response. If violations that are more than minor are associated with these inspection findings, they will be documented and may or may not be cited depending on the safety significance. These violations are not normally assigned severity levels, nor are they normally subject to civil penalties.

> NOTE: Violations associated with inspection findings that are *not evaluated through the SDP* will be assigned severity levels in accordance with Section IV.B and will be subject to civil penalties in accordance with Section VI.C.

---

[5]The term "licensee official" as used in this policy statement means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.

a. Violations Associated with Findings of Very Low Safety Significance

Violations associated with findings that the SDP evaluates as having very low safety significance (i.e., green) will normally be described in inspection reports as Non-Cited Violations (NCVs). The finding will be categorized by the assessment process within the licensee response band. However, a Notice of Violation (NOV) will be issued if the issue meets one of the three applicable exceptions in Section VI.A.1. The Commission recognizes that violations exist below this category that are of minimal safety or environmental significance. While licensees must correct these minor violations, they don't normally warrant documentation in inspection reports and do not warrant enforcement action. To the extent such violations are described, they will be noted as violations of minor significance that are not subject to enforcement action.

b. Violations Associated with Findings of Low to Moderate, or Greater Safety Significance

Violations associated with findings that the SDP evaluates as having low to moderate safety significance (i.e., white), substantial safety significance (yellow), or high safety significance (red) will be cited in an NOV requiring a written response unless sufficient information is already on the docket. The finding will be assigned a color related to its significance for use by the assessment process. The Commission reserves the use of discretion for particularly significant violations (e.g. an accidental criticality) to assess civil penalties in accordance with Section 234 of the Atomic Energy Act of 1954, as amended.

c. Violations Associated with Actual Consequences

Violations that involve actual consequences such as an overexposure to the public or plant personnel above regulatory limits, failure to make the required notifications that impact the ability of Federal, State and local agencies to respond to an actual emergency preparedness (site area or general emergency), transportation event, or a substantial release of radioactive material, will be assigned severity levels and will be subject to civil penalties.

B. Assigning Severity Level

For purposes of determining the appropriate enforcement action, violations (except the majority of those associated with findings evaluated though the SDP) are normally categorized in terms of four levels of severity to show their relative importance or significance within each of the following eight activity areas:

I. Reactor Operations;
II. Facility Construction;
III. Safeguards;
IV. Health Physics;

V. Transportation;
VI. Fuel Cycle and Materials Operations;
VII. Miscellaneous Matters; and
VIII. Emergency Preparedness.

Licensed activities will be placed in the activity area most suitable in light of the particular violation involved, including activities not directly covered by one of the listed areas, e.g., export license activities. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level IV violations are the least significant. Severity Level I and II violations are of very significant regulatory concern.[6] In general, violations that are included in these severity categories involve actual or high potential consequences on public health and safety. Severity Level III violations are cause for significant regulatory concern. Severity Level IV violations are less serious but are of more than minor concern. Violations at Severity Level IV involve noncompliance with NRC requirements that are not considered significant based on risk. This should not be misunderstood to imply that Severity Level IV issues have no risk significance.

The Commission recognizes that there are other violations of minor safety or environmental concern that are below the level of significance of Severity Level IV violations. While licensees must correct these minor violations, they don't normally warrant documentation in inspection reports or inspection records and do not warrant enforcement action. To the extent such violations are described, they will be noted as violations of minor significance that are not subject to enforcement action.

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction.

Supplements I through VIII provide examples and serve as guidance in determining the appropriate severity level for violations in each of the eight activity areas. However, the examples are neither exhaustive nor controlling. In addition, these examples do not create new requirements. Each is designed to illustrate the significance that the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level best suited to the significance of the particular violation.

---

[6] Regulatory concern pertains to primary NRC regulatory responsibilities, *i.e.*, safety, safeguards, and the environment.

V. PREDECISIONAL ENFORCEMENT CONFERENCES

When the NRC learns of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a contractor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, contractor, or other person before taking enforcement action. The purpose of the predecisional enforcement conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) a common understanding of facts, root causes, and missed opportunities associated with the apparent violations; (2) a common understanding of corrective actions taken or planned; and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

The NRC may conduct Regulatory Conferences (in lieu of predecisional enforcement conferences) to discuss the significance of findings evaluated by the Reactor Oversight Process's SDP when apparent violations are associated with potentially significant findings. The purpose of Regulatory Conferences is to get information from licensees on the significance of findings evaluated through the SDP whether or not violations are involved. Because the significance assessment from the SDP determines whether or not escalated enforcement action will be issued (i.e., a Notice of Violation associated with a white, yellow, or red SDP finding), a subsequent predecisional enforcement conference is not normally necessary.

If the NRC concludes that it has sufficient information to make an informed enforcement decision involving a licensee, contractor, or vendor, a predecisional enforcement conference will not normally be held. If a predecisional enforcement conference is not held, the licensee may be given an opportunity to respond to a documented apparent violation (including its root causes and a description of planned or implemented corrective actions) before the NRC takes enforcement action. However, if the NRC has sufficient information to conclude that a civil penalty is not warranted, it may proceed to issue an enforcement action without first obtaining the licensee's response to the documented apparent violation.

The NRC will normally provide an opportunity for an individual to address apparent violations before the NRC takes escalated enforcement action. Whether an individual will be provided an opportunity for a predecisional enforcement conference or an opportunity to address an apparent violation in writing will depend on the circumstances of the case, including the severity of the issue, the significance of the action the NRC is contemplating, and whether the individual has already had an opportunity to address the issue (e.g., an Office of Investigation or a Department of Labor hearing).

During the predecisional enforcement conference, the licensee, contractor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence.

Licensees, contractors, or other persons will be told when a meeting is a predecisional enforcement conference.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in the regional offices and are normally open to public observation. Predecisional enforcement conferences will not normally be open to the public if the enforcement action being contemplated:

(1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;

(2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;

(3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or

(4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

(5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or

(6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a predecisional enforcement conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more interveners or where the evidentiary basis for the conference is a matter of public record, such as an adjudicatory decision by the Department of Labor. In addition, notwithstanding the normal criteria for opening or closing predecisional enforcement conferences, conferences may either be open or closed to the public, with the approval of the Executive Director for Operations, after balancing the benefit of the public's observation against the potential impact on the agency's decision-making process in a particular case.

The NRC will notify the licensee that the predecisional enforcement conference will be open to public observation. Consistent with the agency's policy on open meetings (included on the NRC's Public Meeting Web site), the NRC intends to announce open conferences normally at least 10 calendar days in advance of conferences. Conferences will be announced on the Internet at the NRC Office of Enforcement's homepage (www.nrc.gov/OE) and on the Public Meeting Web site (www.nrc.gov/NRC/PUBLIC/meet.html). Individuals who do not have Internet access

may get assistance on scheduled conferences by contacting the NRC staff at the Public Document Room, by calling toll-free 1-800-397-4209. In addition, the NRC will normally issue a press release and notify appropriate State liaison officers that a predecisional enforcement conference has been scheduled and that it is open to public observation.

The public attending open predecisional enforcement conferences may observe but may not participate in the conference. The purpose of conducting open conferences is not to maximize public attendance, but rather to provide the public with opportunities to be informed of NRC activities consistent with the NRC's ability to exercise its regulatory and safety responsibilities. Therefore, members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the "Standard Operating Procedures For Providing Security Support For NRC Hearings and Meetings," published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18" be permitted, and that disruptive persons may be removed. The open conference will be terminated if disruption interferes with a successful conference. NRC's Predecisional Enforcement Conferences (whether open or closed) normally will be held at the NRC's regional offices or in NRC Headquarters Offices and not in the vicinity of the licensee's facility.

For a case in which an NRC Office of Investigations (OI) report finds that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred, the OI report may be made public, subject to withholding certain information (i.e., after appropriate redaction), in which case the associated predecisional enforcement conference will normally be open to public observation. In a predecisional enforcement conference where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as "complainant") will normally be provided an opportunity to participate in the predecisional enforcement conference with the licensee/employer. This participation will normally be in the form of a complainant statement and comment on the licensee's presentation, followed in turn by an opportunity for the licensee to respond to the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written response to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit written comments on the licensee's response. For cases involving potential discrimination by a contractor, any associated predecisional enforcement conference with the contractor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. The purpose of the complainant's participation is to provide information to the NRC to assist it in its enforcement deliberations.

A predecisional enforcement conference may not need to be held in cases where there is a full adjudicatory record before the Department of Labor. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Members of the public attending open predecisional enforcement conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

VI. DISPOSITION OF VIOLATIONS

This section describes the various ways the NRC can disposition violations. The manner in which a violation is dispositioned is intended to reflect the seriousness of the violation and the circumstances involved. As previously stated, minor violations are not the subject of enforcement action. While licensees must correct these violations, they don't normally warrant documentation in inspection reports or inspection records. Other violations are documented and may be dispositioned as Non-Cited Violations, cited in Notices of Violation, or issued in conjunction with civil penalties or various types of orders. The NRC may also choose to exercise discretion and refrain from issuing enforcement action. (See Section VII.B, "Mitigation of Enforcement Sanctions.") As discussed further in Section VI.E, related administrative actions such as Notices of Nonconformance, Notices of Deviation, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information are used to supplement the enforcement program. In determining the appropriate regulatory response, the NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, such as in transportation matters.

A. Non-Cited Violation (NCV)

A Non-Cited Violation (NCV) is the term used to describe a method for dispositioning a Severity Level IV violation or a violation associated with a finding that the Reactor Oversight Process's SDP evaluates as having very low safety significance (i.e., green). These issues are documented as violations in inspection reports (or inspection records for some materials licensees) to establish public records of the violations, but are not cited in Notices of Violation which normally require written responses from licensees (see Section VI.B below). Dispositioning violations in this manner does not eliminate the NRC's emphasis on compliance

with requirements nor the importance of maintaining safety. Licensees are still responsible for maintaining safety and compliance and must take steps to address corrective actions for these violations. While licensees are not required to provide written responses to NCVs, this approach allows licensees to dispute violations described as NCVs. The following sections describe the circumstances under which a violation may or may not be dispositioned as an NCV.

1. Power Reactor Licensees

Severity Level IV violations and violations associated with green SDP findings are normally dispositioned as NCVs. Violations dispositioned as NCVs will be described in inspection reports, although the NRC will close these violations based on their being entered into the licensee's corrective action program. At the time a violation is closed in an inspection report, the licensee may not have completed its corrective actions or begun the process to identify the root cause and develop action to prevent recurrence. Licensee actions will be taken commensurate with the established priorities and processes of the licensee's corrective action program. The NRC inspection program will provide an assessment of the effectiveness of the corrective action program. In addition to documentation in inspection reports, violations will be entered into the Plant Issues Matrix (PIM). Because the NRC will not normally obtain a written response from licensees describing actions taken to restore compliance and prevent recurrence of these violations, this enforcement approach places greater NRC reliance on licensee corrective action programs. Any one of the following circumstances will result in consideration of an NOV requiring a formal written response from a licensee.

a. The licensee failed to restore compliance within a reasonable time after a violation was identified.

b. The licensee did not place the violation into a corrective action program to address recurrence.

c. The violation is repetitive[7] as a result of inadequate corrective action, and was identified by the NRC. NOTE: This exception does not apply to violations associated with green SDP findings.

d. The violation was willful. Notwithstanding willfulness, an NCV may still be appropriate if:

[7]A violation is considered "repetitive" if it could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or a previous licensee finding that occurred within the past 2 years of the inspection at issue, or the period within the last two inspections, whichever is longer.

(1) The licensee identified the violation and the information concerning the violation, if not required to be reported, was promptly provided to appropriate NRC personnel, such as a resident inspector or regional branch chief;

(2) The violation involved the acts of a low-level individual (and not a licensee official as defined in Section IV.A);

(3) The violation appears to be the isolated action of the employee without management involvement and the violation was not caused by lack of management oversight as evidenced by either a history of isolated willful violations or a lack of adequate audits or supervision of employees; and

(4) Significant remedial action commensurate with the circumstances was taken by the licensee such that it demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's organization.

The approval of the Director, Office of Enforcement, with consultation with the Deputy Executive Director as warranted, is required for dispositioning willful violations as NCVs.

2. - 7. [Reserved]

8. All Other Licensees

Severity Level IV violations that are dispositioned as NCVs will be described in inspection reports (or inspection records for some materials licensees) and will include a brief description of the corrective action the licensee has either taken or planned to take. Any one of the following circumstances will result in consideration of an NOV requiring a formal written response from a licensee.

a. The licensee failed to identify the violation;[8]

b. The licensee did not correct or commit to correct the violation within a reasonable time by specific corrective action committed to by the end of the inspection, including immediate corrective action and comprehensive corrective action to prevent recurrence; and

c. The violation is repetitive as a result of inadequate corrective action;

[8]An NOV is warranted when a licensee identifies a violation as a result of an event where the root cause of the event is obvious or the licensee had prior opportunity to identify the problem but failed to take action that would have prevented the event. Disposition as an NCV may be warranted if the licensee demonstrated initiative in identifying the violation's root cause.

d. The violation was willful. Notwithstanding willfulness, an NCV may still be appropriate if it meets the criteria in Section VI.A.1.d.

The approval of the Director, Office of Enforcement, with consultation with the Deputy Executive Director as warranted, is required for dispositioning willful violations as NCVs.

B. Notice of Violation

A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The Notice of Violation normally requires the recipient to provide a written statement describing (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) corrective steps that have been taken and the results achieved; (3) corrective steps that will be taken to prevent recurrence; and (4) the date when full compliance will be achieved. The NRC may waive all or portions of a written response to the extent that relevant information has already been provided to the NRC in writing or documented in an NRC inspection report or inspection record. The NRC may require responses to Notices of Violation to be under oath. Normally, responses under oath will be required only in connection with Severity Level I, II, or III violations; violations associated with findings that the SDP evaluates as having low to moderate, or greater safety significance (i.e., white, yellow, or red); or orders.

Issuance of a Notice of Violation is normally the only enforcement action taken for Severity Level I, II, and III violations, except in cases where the criteria for issuance of civil penalties and orders, as set forth in Sections VI.C and VI.D, respectively, are met.

C. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the Energy Reorganization Act. Civil penalties are designed to deter future violations both by the involved licensee and other licensees conducting similar activities. Civil penalties also emphasize the need for licensees to identify violations and take prompt comprehensive corrective action.

Civil penalties are normally assessed for Severity Level I and II violations and knowing and conscious violations of the reporting requirements of section 206 of the Energy Reorganization Act. Civil penalties are considered for Severity Level III violations.

Civil penalties are also considered for violations associated with inspection findings evaluated through the Reactor Oversight Process's SDP that involved actual consequences, such as an overexposure to the public or plant personnel above regulatory limits, failure to make the

required notifications that impact the ability of Federal, State and local agencies to respond to an actual emergency preparedness event (site area or general emergency), transportation event, or a substantial release of radioactive material. (Civil penalties are not proposed for violations associated with low to moderate, or greater safety significant findings absent actual consequences.)

Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus licensees' attention on significant violations.

Although management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of management involvement may not be used to mitigate a civil penalty. Allowing mitigation in the latter case could encourage the lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

1. Base Civil Penalty

The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, contractors, and other persons. Violations that involve loss, abandonment, or improper transfer or disposal of a sealed source or device are treated separately, regardless of the use or the type of licensee. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs, and for the loss, abandonment or improper transfer or disposal of a sealed source or device. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider necessary increases or decreases on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

TABLE 1A--BASE CIVIL PENALTIES

a.	Power reactors and gaseous diffusion plants	$130,000
b.	Fuel fabricators authorized to possess Category I or II quantities of SNM	$65,000
c.	Fuel fabricators, industrial processors,[1] and independent spent fuel and monitored retrievable storage installations	$32,500
d.	Test reactors, mills and uranium conversion facilities, contractors, waste disposal licensees, industrial radiographers, and other large material users	$13,000
e.	Research reactors, academic, medical, or other small material users[2]	$6,500
f.	Loss, abandonment, or improper transfer or disposal of a sealed source or device, regardless of the use or type of licensee:[3]	
	1. Sources or devices with a total activity greater than 3.7×10^4 MBq (1 Curie), excluding hydrogen-3 (tritium)	$50,000
	2. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i)	$16,500
	3. Sources and devices not otherwise described above	$6,500

[1]Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

[2]This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

[3]These base civil penalty amounts have been determined to be approximately three times the average cost of disposal. For specific cases, NRC may adjust these amounts to correspond to three times the actual expected cost of authorized disposal.

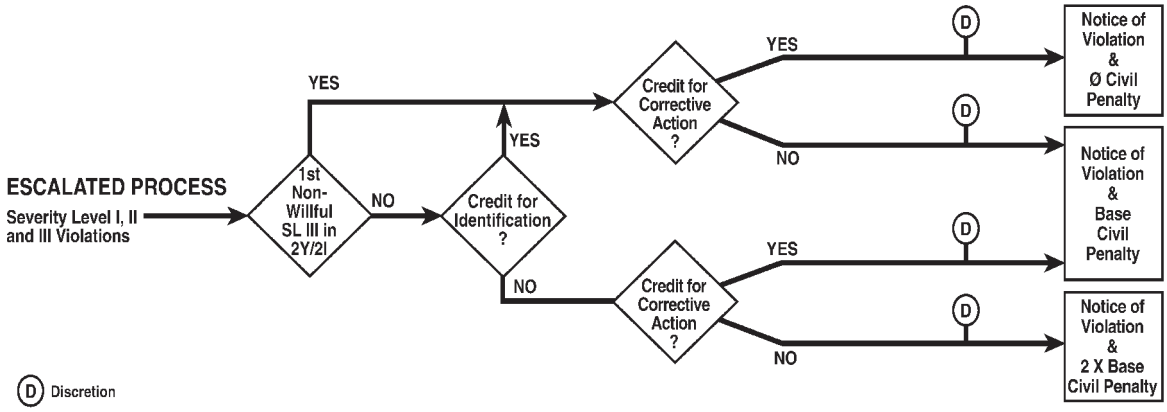
TABLE 1B--BASE CIVIL PENALTIES

Severity Level	Base Civil Penalty Amount (Percent of amount listed in Table 1A)
I	100%
II	80%
III	50%

2. Civil Penalty Assessment

In an effort to (1) emphasize the importance of adherence to requirements and (2) reinforce prompt self-identification of problems and root causes and prompt and comprehensive correction of violations, the NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties shown in Table 1A and 1B for Severity Level I, II, and III violations as described below.

The civil penalty assessment process considers four decisional points: (a) whether the licensee has had any previous escalated enforcement action (regardless of the activity area) during the past 2 years or past 2 inspections, whichever is longer; (b) whether the licensee should be given credit for actions related to identification; (c) whether the licensee's corrective actions are prompt and comprehensive; and (d) whether, in view of all the circumstances, the matter in question requires the exercise of discretion. Although each of these decisional points may have several associated considerations for any given case, the outcome of the assessment process for each violation or problem, absent the exercise of discretion, is limited to one of the following three results: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100 percent. The flow chart presented below is a graphic representation of the civil penalty assessment process.



a. Initial Escalated Action

When the NRC determines that a non-willful Severity Level III violation or problem has occurred, and the licensee has not had <u>any</u> previous escalated actions (regardless of the activity area) during the past 2 years or 2 inspections, whichever is longer, the NRC will consider whether the licensee's corrective action for the present violation or problem is reasonably prompt and comprehensive (see the discussion under Section VI.C.2.c, below). Using 2 years as the basis for assessment is expected to cover most situations, but considering a slightly longer or shorter period might be warranted based on the circumstances of a particular case. The starting point of this period should be considered the date when the licensee was put on notice of the need to take corrective action. For a licensee-identified violation or an event, this would be when the

licensee is aware that a problem or violation exists requiring corrective action. For an NRC-identified violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication.

If the corrective action is judged to be prompt and comprehensive, a Notice of Violation normally should be issued with no associated civil penalty. If the corrective action is judged to be less than prompt and comprehensive, the Notice of Violation normally should be issued with a base civil penalty.

b. Credit for Actions Related to Identification

(1) If a Severity Level I or II violation or a willful Severity Level III violation has occurred--or if, during the past 2 years or 2 inspections, whichever is longer, the licensee has been issued at least one other escalated action--the civil penalty assessment should normally consider the factor of identification in addition to corrective action (see the discussion under Section VI.C.2.c, below). In these circumstances, the NRC should consider whether the licensee should be given credit for actions related to identification.

In each case, the decision should be focused on identification of the problem requiring corrective action. In other words, although giving credit for *Identification* and *Corrective Action* should be separate decisions, the concept of *Identification* presumes that the identifier recognizes the existence of a problem, and understands that corrective action is needed. The decision on *Identification* requires considering all the circumstances of identification including:

(i) Whether the problem requiring corrective action was NRC-identified, licensee-identified, or revealed through an event[9];

(ii) Whether prior opportunities existed to identify the problem requiring corrective action, and if so, the age and number of those opportunities;

(iii) Whether the problem was revealed as the result of a licensee self-monitoring effort, such as conducting an audit, a test, a surveillance, a design review, or troubleshooting;

---

[9]An "event," as used here, means (1) an event characterized by an active adverse impact on equipment or personnel, readily obvious by human observation or instrumentation, or (2) a radiological impact on personnel or the environment in excess of regulatory limits, such as an overexposure, a release of radioactive material above NRC limits, or a loss of radioactive material. For example, an equipment failure discovered through a spill of liquid, a loud noise, the failure to have a system respond properly, or an annunciator alarm would be considered an event; a system discovered to be inoperable through a document review would not. Similarly, if a licensee discovered, through quarterly dosimetry readings, that employees had been inadequately monitored for radiation, the issue would normally be considered licensee-identified; however, if the same dosimetry readings disclosed an overexposure, the issue would be considered an event.

(iv) For a problem revealed through an event, the ease of discovery, and the degree of licensee initiative in identifying the root cause of the problem and any associated violations;

(v) For NRC-identified issues, whether the licensee would likely have identified the issue in the same time-period if the NRC had not been involved;

(vi) For NRC-identified issues, whether the licensee should have identified the issue (and taken action) earlier; and

(vii) For cases in which the NRC identifies the overall problem requiring corrective action (e.g., a programmatic issue), the degree of licensee initiative or lack of initiative in identifying the problem or problems requiring corrective action.

(2) Although some cases may consider all of the above factors, the importance of each factor will vary based on the type of case as discussed in the following general guidance:

(i) **Licensee-Identified**. When a problem requiring corrective action is licensee-identified (i.e., identified before the problem has resulted in an event), the NRC should normally give the licensee credit for actions related to identification, regardless of whether prior opportunities existed to identify the problem.

(ii) **Identified Through an Event**. When a problem requiring corrective action is identified through an event, the decision on whether to give the licensee credit for actions related to identification normally should consider the ease of discovery, whether the event occurred as the result of a licensee self-monitoring effort (i.e., whether the licensee was "looking for the problem"), the degree of licensee initiative in identifying the problem or problems requiring corrective action, and whether prior opportunities existed to identify the problem.

Any of these considerations may be overriding if particularly noteworthy or particularly egregious. For example, if the event occurred as the result of conducting a surveillance or similar self-monitoring effort (i.e., the licensee was looking for the problem), the licensee should normally be given credit for identification. Even if the problem was easily discovered (e.g., revealed by a large spill of liquid), the NRC may choose to give credit because noteworthy licensee effort was exerted in ferreting out the root cause and associated violations, or simply because no prior opportunities (e.g., procedural cautions, post-maintenance testing, quality control failures, readily observable parameter trends, or repeated or locked-in annunciator warnings) existed to identify the problem.

(iii) **NRC-Identified**. When a problem requiring corrective action is NRC-identified, the decision on whether to give the licensee credit for actions related to *Identification* should normally be based on an additional question: should the licensee have reasonably identified the problem (and taken action) earlier?

In most cases, this reasoning may be based simply on the ease of the NRC inspector's discovery (e.g., conducting a walkdown, observing in the control room, performing a confirmatory NRC radiation survey, hearing a cavitating pump, or finding a valve obviously out of position). In some cases, the licensee's missed opportunities to identify the problem might include a similar previous violation, NRC or industry notices, internal audits, or readily observable trends.

If the NRC identifies the violation but concludes that, under the circumstances, the licensee's actions related to *Identification* were not unreasonable, the matter would be treated as licensee-identified for purposes of assessing the civil penalty. In such cases, the question of *Identification* credit shifts to whether the licensee should be penalized for NRC's identification of the problem.

(iv) **Mixed Identification**. For "mixed" identification situations (i.e., where multiple violations exist, some NRC-identified, some licensee-identified, or where the NRC prompted the licensee to take action that resulted in the identification of the violation), the NRC's evaluation should normally determine whether the licensee could reasonably have been expected to identify the violation in the NRC's absence. This determination should consider, among other things, the timing of the NRC's discovery, the information available to the licensee that caused the NRC concern, the specificity of the NRC's concern, the scope of the licensee's efforts, the level of licensee resources given to the investigation, and whether the NRC's path of analysis had been dismissed or was being pursued in parallel by the licensee.

In some cases, the licensee may have addressed the isolated symptoms of each violation (and may have identified the violations), but failed to recognize the common root cause and taken the necessary comprehensive action. Where this is true, the decision on whether to give licensee credit for actions related to *Identification* should focus on identification of *the problem requiring corrective action* (e.g., the programmatic breakdown). As such, depending on the chronology of the various violations, the earliest of the individual violations might be considered missed opportunities for the licensee to have identified the larger problem.

(v) **Missed Opportunities to Identify**. Missed opportunities include prior notifications or missed opportunities to identify or prevent violations such as (1) through normal surveillances, audits, or quality assurance (QA) activities; (2) through prior notice, i.e., specific NRC or industry notification; or (3) through other reasonable indication of a potential problem or violation, such as observations of employees and contractors, and failure to take effective corrective steps. It may include findings of the NRC, the licensee, or industry made at other facilities operated by the licensee where it is reasonable to expect the licensee to take action to identify or prevent similar problems at the facility subject to the enforcement action at issue. In assessing this factor, consideration will be given to, among other things, the opportunities available to discover the violation, the ease of discovery, the similarity between the violation and the notification, the period of time between when the violation occurred and when the notification was issued, the action taken (or planned) by the licensee in response to the

notification, and the level of management review that the notification received (or should have received).

The evaluation of missed opportunities should normally depend on whether the information available to the licensee should reasonably have caused action that would have prevented the violation. Missed opportunities is normally not applied where the licensee appropriately reviewed the opportunity for application to its activities and reasonable action was either taken or planned to be taken within a reasonable time.

In some situations the missed opportunity is a violation in itself. In these cases, unless the missed opportunity is a Severity Level III violation in itself, the missed opportunity violation may be grouped with the other violations into a single Severity Level III "problem." However, if the missed opportunity is the *only* violation, then it should not normally be counted twice (i.e., both as the violation and as a missed opportunity--"double counting") unless the number of opportunities missed was particularly significant.

The timing of the missed opportunity should also be considered. While a rigid time-frame is unnecessary, a 2-year period should generally be considered for consistency in implementation, as the period reflecting relatively current performance.

(3) When the NRC determines that the licensee should receive credit for actions related to *Identification*, the civil penalty assessment should normally result in either no civil penalty or a base civil penalty, based on whether *Corrective Action* is judged to be reasonably prompt and comprehensive. When the licensee is *not* given credit for actions related to *Identification*, the civil penalty assessment should normally result in a Notice of Violation with either a base civil penalty or a base civil penalty escalated by 100 percent, depending on the quality of *Corrective Action*, because the licensee's performance is clearly not acceptable.

c. Credit for Prompt and Comprehensive Corrective Action

The purpose of the *Corrective Action* factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirement(s); and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root causes.

Regardless of other circumstances (e.g., past enforcement history, identification), the licensee's corrective actions should always be evaluated as part of the civil penalty assessment process. As a reflection of the importance given to this factor, an NRC judgment that the licensee's corrective action has not been prompt and comprehensive will always result in issuing at least a base civil penalty.

In assessing this factor, consideration will be given to the timeliness of the corrective action (including the promptness in developing the schedule for long term corrective action), the adequacy of the licensee's root cause analysis for the violation, and, given the significance and complexity of the issue, the comprehensiveness of the corrective action (i.e., whether the action is focused narrowly to the specific violation or broadly to the general area of concern). Even in cases when the NRC, at the time of the enforcement conference, identifies additional peripheral or minor corrective action still to be taken, the licensee may be given credit in this area, as long as the licensee's actions addressed the underlying root cause and are considered sufficient to prevent recurrence of the violation and similar violations.

Normally, the judgment of the adequacy of corrective actions will hinge on whether the NRC had to take action to focus the licensee's evaluative and corrective process in order to obtain comprehensive corrective action. This will normally be judged at the time of the predecisional enforcement conference (e.g., by outlining substantive additional areas where corrective action is needed). Earlier informal discussions between the licensee and NRC inspectors or management may result in improved corrective action, but should not normally be a basis to deny credit for *Corrective Action*. For cases in which the licensee does not get credit for actions related to *Identification* because the NRC identified the problem, the assessment of the licensee's corrective action should begin from the time when the NRC put the licensee on notice of the problem. Notwithstanding eventual good comprehensive corrective action, if immediate corrective action was not taken to restore safety and compliance once the violation was identified, corrective action would not be considered prompt and comprehensive.

Corrective action for violations involving discrimination should normally only be considered comprehensive if the licensee takes prompt, comprehensive corrective action that (1) addresses the broader environment for raising safety concerns in the workplace, and (2) provides a remedy for the particular discrimination at issue.

In response to violations of 10 CFR 50.59, corrective action should normally be considered prompt and comprehensive only if the licensee --

(i) Makes a prompt decision on operability; and either

(ii) Makes a prompt evaluation under 10 CFR 50.59 if the licensee intends to maintain the facility or procedure in the as found condition; or

(iii) Promptly initiates corrective action consistent with Criterion XVI of 10 CFR 50, Appendix B, if it intends to restore the facility or procedure to the FSAR description.

d. Exercise of Discretion

As provided in Section VII, "Exercise of Discretion," discretion may be exercised by either escalating or mitigating the amount of the civil penalty determined after applying the civil penalty adjustment factors to ensure that the proposed civil penalty reflects all relevant circumstances of the particular case. However, in no instance will a civil penalty for any one violation exceed $130,000 per day.

D. Orders

An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (see 10 CFR 2.202). Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate for Severity Level I, II, or III violations. Orders may be issued as follows:

1. License Modification orders are issued when some change in licensee equipment, procedures, personnel, or management controls is necessary.

2. Suspension Orders may be used:

(a) To remove a threat to the public health and safety, common defense and security, or the environment;

(b) To stop facility construction when,

(i) Further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component; or

(ii) The licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;

(c) When the licensee has not responded adequately to other enforcement action;

(d) When the licensee interferes with the conduct of an inspection or investigation; or

(e) For any reason not mentioned above for which license revocation is legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

3. Revocation Orders may be used:

(a) When a licensee is unable or unwilling to comply with NRC requirements;

(b) When a licensee refuses to correct a violation;

(c) When licensee does not respond to a Notice of Violation where a response was required;

(d) When a licensee refuses to pay an applicable fee under the Commission's regulations; or

(e) For any other reason for which revocation is authorized under section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).

4. Cease and Desist Orders may be used to stop an unauthorized activity that has continued after notification by the NRC that the activity is unauthorized.

5. Orders to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, or applicants for any of them, and to employees of any of the foregoing, are used when the NRC has identified deliberate misconduct that may cause a licensee to be in violation of an NRC requirement or where incomplete or inaccurate information is deliberately submitted or where the NRC loses its reasonable assurance that the licensee will meet NRC requirements with that person involved in licensed activities.

Unless a separate response is warranted under 10 CFR 2.201, a Notice of Violation need not be issued where an order is based on violations described in the order. The violations described in an order need not be categorized by severity level.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show why the order should not be issued in the proposed manner by way of a Demand for Information. (See 10 CFR 2.204)

E. Related Administrative Actions

In addition to NCVs, NOVs, civil penalties, and orders, the NRC also uses administrative actions, such as Notices of Deviation, Notices of Nonconformance, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information to supplement its enforcement program. The NRC expects licensees and contractors to adhere to any obligations and commitments resulting from these actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met.

1. **Notices of Deviation** are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests that a licensee provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

2. **Notices of Nonconformance** are written notices describing contractors' failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. Notices of Nonconformances request that non-licensees provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

3. **Confirmatory Action Letters** are letters confirming a licensee's or contractor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

4. **Letters of Reprimand** are letters addressed to individuals subject to Commission jurisdiction identifying a significant deficiency in their performance of licensed activities.

5. **Demands for Information** are demands for information from licensees or other persons for the purpose of enabling the NRC to determine whether an order or other enforcement action should be issued.

VII. EXERCISE OF DISCRETION

Notwithstanding the normal guidance contained in this policy, as provided in Section III, "Responsibilities," the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions within the Commission's statutory authority to ensure that the resulting enforcement action takes into consideration all of the relevant circumstances of the particular case.

A. Escalation of Enforcement Sanctions

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. The NRC also considers violations associated with findings that the Reactor Oversight Process's Significance Determination Process evaluates as having low to moderate, or greater safety significance (i.e., white, yellow, or red) to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC may apply its full enforcement authority where the action is warranted. NRC action may include (1) escalating civil penalties; (2) issuing appropriate orders; and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of $130,000 per violation, per day.

1. Civil Penalties

Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.C, the NRC may exercise discretion by either proposing a civil penalty where application of the factors would otherwise result in zero penalty or by escalating the amount of the resulting civil penalty (i.e., base or twice the base civil penalty) to ensure that the proposed civil penalty reflects the significance of the circumstances. The Commission will be notified if the deviation in the amount of the civil penalty proposed under this discretion from the amount of the civil penalty assessed under the normal process is more than two times the base civil penalty shown in Tables 1A and 1B. Examples when this discretion should be considered include, but are not limited to the following:

(a) Problems categorized at Severity Level I or II;

(b) Overexposures, or releases of radiological material in excess of NRC requirements;

(c) Situations involving particularly poor licensee performance, or involving willfulness;

(d) Situations when the licensee's previous enforcement history has been particularly poor, or when the current violation is directly repetitive of an earlier violation;

(e) Situations when the violation results in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase;

(f) Situations when the licensee made a conscious decision to be in noncompliance in order to obtain an economic benefit;

(g) Cases involving the loss, abandonment, or improper transfer or disposal of a sealed source or device. Notwithstanding the outcome of the normal civil penalty assessment process, these cases normally should result in a civil penalty of at least the base amount; or

(h) Severity Level II or III violations associated with departures from the Final Safety Analysis Report identified after March 30, 2000, for risk-significant items as defined by the licensee's maintenance rule program and March 30, 2001, for all other issues. Such a violation or problem would consider the number and nature of the violations, the severity of the violations, whether the violations were continuing, and who identified the violations (and if the licensee identified the violation, whether exercise of Section VII.B.3 enforcement discretion is warranted.)

2. Orders

The NRC may, where necessary or desirable, issues orders in conjunction with or in lieu of civil penalties to achieve or formalize corrective actions and to deter further recurrence of serious violations.

3. Daily Civil Penalties

In order to recognize the added significance for those cases where a very strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of $130,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware of or clearly should have been aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to do so.

B. Mitigation of Enforcement Sanctions

The NRC may exercise discretion and refrain from issuing a civil penalty and/or a Notice of Violation after considering the general principles of this statement of policy and the surrounding circumstances.[10] The approval of the Director, Office of Enforcement, in consultation with the Deputy Executive Director, as warranted, is required for exercising discretion of the type described in Sections VII.B.2 through VII.B.6. The circumstances under which mitigation discretion should be considered include, but are not limited to the following:

1. [Reserved]

---

[10] The mitigation discretion described in Sections VII.B.2 - VII.B.6 does not normally apply to violations associated with issues evaluated by the SDP. The Reactor Oversight Process will use the Agency Action Matrix to determine the agency response to performance issues. The Agency Action Matrix has provisions to consider extenuating circumstances that were previously addressed through enforcement mitigation.

2. *Violations Identified During Extended Shutdowns or Work Stoppages*

The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a Severity Level II, III, or IV violation that is identified after (i) the NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or (ii) the licensee enters an extended shutdown or work stoppage related to generally poor performance over a long period of time, provided that the violation is documented in an inspection report (or inspection records for some material cases) and that it meets all of the following criteria:

(a) It was either licensee-identified as a result of a comprehensive program for problem identification and correction that was developed in response to the shutdown or identified as a result of an employee allegation to the licensee; (If the NRC identifies the violation and all of the other criteria are met, the NRC should determine whether enforcement action is necessary to achieve remedial action, or if discretion may still be appropriate.)

(b) It is based upon activities of the licensee prior to the events leading to the shutdown;

(c) It would not be categorized at Severity Level I;

(d) It was not willful; and

(e) The licensee's decision to restart the plant requires NRC concurrence.

3. *Violations Involving Old Design Issues*

The NRC may refrain from proposing a civil penalty for a Severity Level II or III violation involving a past problem, such as in engineering, design, or installation, if the violation is documented in an inspection report (or inspection records for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was a licensee-identified as a result of its voluntary initiative;

(b) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification (this action should involve expanding the initiative, as necessary, to identify other failures caused by similar root causes); and

(c) It was not likely to be identified (after the violation occurred) by routine licensee efforts such as normal surveillance or quality assurance (QA) activities.

In addition, the NRC may refrain from issuing a Notice of Violation for a Severity Level II, III, or IV violation that meets the above criteria provided the violation was caused by conduct that is not reasonably linked to present performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and there had not been prior notice so that the licensee should have reasonably identified the violation earlier. This exercise of discretion is to place a premium on licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called upon to work.

Section VII.B.3 discretion would not normally be applied to departures from the FSAR if:

(a) The NRC identifies the violation, unless it was likely in the NRC staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's initiative provided the schedule provides for completion of the licensee's initiative by March 30, 2000, for risk-significant items as defined by the licensee's maintenance rule program and by March 30, 2001, for all other issues;

(b) The licensee identifies the violation as a result of an event or surveillance or other required testing where required corrective action identifies the FSAR issue;

(c) The licensee identifies the violation but had prior opportunities to do so (was aware of the departure from the FSAR) and failed to correct it earlier;

(d) There is willfulness associated with the violation;

(e) The licensee fails to make a report required by the identification of the departure from the FSAR; or

(f) The licensee either fails to take comprehensive corrective action or fails to appropriately expand the corrective action program. The corrective action should be broad with a defined scope and schedule.

4. *Violations Identified Due to Previous Enforcement Action*

The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a Severity Level II, III, or IV violation that is identified after the NRC has taken enforcement action, if the violation is documented in an inspection report (or inspection records for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was licensee-identified as part of the corrective action for the previous enforcement action;

(b) It has the same or similar root cause as the violation for which enforcement action was issued;

(c) It does not substantially change the safety significance or the character of the regulatory concern arising out of the initial violation; and

(d) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification.

(e) It would not be categorized at Severity Level I;

5. *Violations Involving Certain Discrimination Issues*

Enforcement discretion may be exercised for discrimination cases when a licensee who, without the need for government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and the overall work environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1974, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment. Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL, that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (*e.g.*, by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations), allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

6. *Violations Involving Special Circumstances*

Notwithstanding the outcome of the normal enforcement process addressed in Section VI.B or the normal civil penalty assessment process addressed in Section VI.C, the NRC may reduce or refrain from issuing a civil penalty or a Notice of Violation for a Severity Level II, III, or IV violation based on the merits of the case after considering the guidance in this statement of policy and such factors as the age of the violation, the significance of the violation, the clarity of the requirement, the appropriateness of the requirement, the overall sustained performance of the licensee has been particularly good, and other relevant circumstances, including any that may have changed since the violation. This discretion is expected to be exercised only where application of the normal guidance in the policy is unwarranted. In addition, the NRC may refrain from issuing enforcement action for violations resulting from matters not within a licensee's control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees and contractors. Accordingly, this policy should not be construed to excuse personnel or contractor errors.

C. Notice of Enforcement Discretion for Power Reactors and Gaseous Diffusion Plants

On occasion, circumstances may arise where a power reactor's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant (GDP), circumstances may arise where compliance with a Technical Safety Requirement (TSR) or technical specification or other certificate condition would unnecessarily call for a total plant shutdown or, notwithstanding that a safety, safeguards, or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required.

In these circumstances, the NRC staff may choose not to enforce the applicable TS, TSR, or other license or certificate condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. The NRC staff may also grant enforcement discretion in cases involving severe weather or other natural phenomena, based upon balancing the public health and safety or common defense and security of not operating against the potential radiological or other hazards associated with continued operation, and a determination that safety will not be impacted unacceptably by exercising this discretion. The Commission is to be informed expeditiously following the granting of a NOED in these situations. A licensee or certificate holder seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, that documents the safety basis for the request and

provides whatever other information necessary for the NRC staff to make a decision on whether to issue a NOED.

For power reactors, the appropriate Regional Administrator, or his or her designee, may issue a NOED after consultation with the Director, Office of Nuclear Reactor Regulation, or his or her designee, to determine the appropriateness of granting a NOED where (1) the noncompliance is temporary and nonrecurring when an amendment is not practical or (2) if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an emergency or exigent license amendment under the provisions of 10 CFR 50.91 (a)(5) or (6). For gaseous diffusion plants, the appropriate Regional Administrator, or his or her designee, may issue and document a NOED where the noncompliance is temporary and nonrecurring and when an amendment is not practical. The Director, Office of Nuclear Materials Safety and Safeguards, or his or her designee, may issue a NOED if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process a certificate amendment under 10 CFR 76.45. The person exercising enforcement discretion will document the decision.

For an operating reactor, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that, it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to startup is less likely than exercising it for an operating plant, as simply delaying startup does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the conditions of the license: (1) the equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or other license condition requires a test, inspection, or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

For GDPs, the exercise of enforcement discretion would be used where compliance with a certificate condition would involve an unnecessary plant shutdown or, notwithstanding that a safety, safeguards, or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required. Such regulatory flexibility is needed because a total plant shutdown is not necessarily the best response to a plant condition. GDPs are designed to operate continuously and have never been shut down. Although portions can be shut down for maintenance, the NRC staff has been

informed by the certificate holder that restart from a total plant shutdown may not be practical and the staff agrees that the design of a GDP does not make restart practical. Hence, the decision to place either GDP in plant-wide shutdown condition would be made only after determining that there is inadequate safety, safeguards, or security and considering the total impact of the shutdown on safety, the environment, safeguards, and security. A NOED would not be used for noncompliances with other than certificate requirements, or for situations where the certificate holder cannot demonstrate adequate safety, safeguards, or security.

The decision to exercise enforcement discretion does not change the fact that a violation will occur nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation at issue. In each case where the NRC staff has chosen to issue a NOED, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used. The enforcement action is intended to emphasize that licensees and certificate holders should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license or certificate amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended, or plant startup may be delayed, absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forego enforcement is discretionary. When enforcement discretion is to be exercised, it is to be exercised only if the NRC staff is clearly satisfied that the action is warranted from a health and safety perspective.

VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS

Enforcement actions involving individuals, including licensed operators, are significant personnel actions, which will be closely controlled and judiciously applied. An enforcement action involving an individual will normally be taken only when the NRC is satisfied that the individual fully understood, or should have understood, his or her responsibility; knew, or should have known, the required actions; and knowingly, or with careless disregard (i.e., with more than mere negligence) failed to take required actions which have actual or potential safety significance. Most transgressions of individuals at the level of Severity Level III or IV violations will be handled by citing only the facility licensee.

More serious violations, including those involving the integrity of an individual (e.g., lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual as well as against the facility licensee. However, action against the individual will not be taken if the improper action by the individual was caused by management failures. The following examples of situations illustrate this concept:

- Inadvertent individual mistakes resulting from inadequate training or guidance provided by the facility licensee.

- Inadvertently missing an insignificant procedural requirement when the action is routine, fairly uncomplicated, and there is no unusual circumstance indicating that the procedures should be referred to and followed step-by-step.

- Compliance with an express direction of management, such as the Shift Supervisor or Plant Manager, resulted in a violation unless the individual did not express his or her concern or objection to the direction.

- Individual error directly resulting from following the technical advice of an expert unless the advise was clearly unreasonable and the licensed individual should have recognized it as such.

- Violations resulting from inadequate procedures unless the individual used a faulty procedure knowing it was faulty and had not attempted to get the procedure corrected.

Listed below are examples of situations which could result in enforcement actions involving individuals, licensed or unlicensed. If the actions described in these examples are taken by a licensed operator or taken deliberately by an unlicensed individual, enforcement action may be taken directly against the individual. However, violations involving willful conduct not amounting to deliberate action by an unlicensed individual in these situations may result in enforcement action against a licensee that may impact an individual. The situations include, but are not limited to, violations that involve:

- Willfully causing a licensee to be in violation of NRC requirements.
- Willfully taking action that would have caused a licensee to be in violation of NRC requirements but the action did not do so because it was detected and corrective action was taken.
- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully defeating alarms which have safety significance.
- Unauthorized abandoning of reactor controls.
- Dereliction of duty.
- Falsifying records required by NRC regulations or by the facility license.
- Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC.
- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization.
- Submitting false information and as a result gaining unescorted access to a nuclear power plant.
- Willfully providing false data to a licensee by a contractor or other person who provides test or other services, when the data affects the licensee's compliance with 10 CFR Part 50, Appendix B, or other regulatory requirement.
- Willfully providing false certification that components meet the requirements of their intended use, such as ASME Code.
- Willfully supplying, by contractors of equipment for transportation of radioactive material, casks that do not comply with their certificates of compliance.
- Willfully performing unauthorized bypassing of required reactor or other facility safety systems.
- Willfully taking actions that violate Technical Specification Limiting Conditions for Operation or other license conditions (enforcement action for a willful violation will not be taken if that violation is the result of action taken following the NRC's decision to forego enforcement of the Technical Specification or other license condition or if the operator meets the requirements of 10 CFR 50.54 (x), (i.e., unless the operator acted unreasonably considering all the relevant circumstances surrounding the emergency.)

Normally, some enforcement action is taken against a licensee for violations caused by significant acts of wrongdoing by its employees, contractors, or contractors' employees. In deciding whether to issue an enforcement action to an unlicensed person as well as to the

licensee, the NRC recognizes that judgments will have to be made on a case by case basis. In making these decisions, the NRC will consider factors such as the following:

1. The level of the individual within the organization.

2. The individual's training and experience as well as knowledge of the potential consequences of the wrongdoing.

3. The safety consequences of the misconduct.

4. The benefit to the wrongdoer, e.g., personal or corporate gain.

5. The degree of supervision of the individual, i.e., how closely is the individual monitored or audited, and the likelihood of detection (such as a radiographer working independently in the field as contrasted with a team activity at a power plant).

6. The employer's response, e.g., disciplinary action taken.

7. The attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility.

8. The degree of management responsibility or culpability.

9. Who identified the misconduct.

Any proposed enforcement action involving individuals must be issued with the concurrence of the Deputy Executive Director. The particular sanction to be used should be determined on a case-by-case basis.[11] Notices of Violation and Orders are examples of enforcement actions that may be appropriate against individuals. The administrative action of a Letter of Reprimand may also be considered. In addition, the NRC may issue Demands for Information to gather information to enable it to determine whether an order or other enforcement action should be issued.

Orders to NRC-licensed reactor operators may involve suspension for a specified period, modification, or revocation of their individual licenses. Orders to unlicensed individuals might include provisions that would:

---

[11]Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, the NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

- Prohibit involvement in NRC licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied, e.g., completing specified training or meeting certain qualifications.

- Require notification to the NRC before resuming work in licensed activities.

- Require the person to tell a prospective employer or customer engaged in licensed activities that the person has been subject to an NRC order.

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a Notice of Violation or a civil penalty to the Part 55 licensee, or an order to suspend, modify, or revoke the Part 55 license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR Part 26 or the facility licensee's cutoff levels, if lower. However, normally only a Notice of Violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties or evidence of prolonged use. In addition, the NRC intends to issue an order to suspend the Part 55 license for up to 3 years the second time a licensed operator exceeds those cutoff levels. In the event there are less than 3 years remaining in the term of the individual's license, the NRC may consider not renewing the individual's license or not issuing a new license after the three year period is completed. The NRC intends to issue an order to revoke the Part 55 license the third time a licensed operator exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is also subject to license suspension, revocation, or denial.

In addition, the NRC may take enforcement action against a licensee that may impact an individual, where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The NRC may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, appropriate enforcement actions may be taken regarding matters that raise issues of integrity, competence, fitness-for-duty, or other matters that may not necessarily be a violation of specific Commission requirements.

In the case of an unlicensed person, whether a firm or an individual, an order modifying the facility license may be issued to require (1) the removal of the person from all licensed activities for a specified period of time or indefinitely, (2) prior notice to the NRC before using the person in licensed activities, or (3) the licensee to provide notice of the issuance of such an order to other persons involved in licensed activities making reference inquiries. In addition, orders to employers might require retraining, additional oversight, or independent verification of activities performed by the person, if the person is to be involved in licensed activities.

IX. INACCURATE AND INCOMPLETE INFORMATION

A violation of the regulations involving the submittal of incomplete and/or inaccurate information, whether or not considered a material false statement, can result in the full range of enforcement sanctions. The labeling of a communication failure as a material false statement will be made on a case-by-case basis and will be reserved for egregious violations. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a licensee normally will be categorized based on the guidance herein, in Section IV, "Significance of Violations," and in Supplement VII.

The Commission recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, the Commission must be able to rely on oral communications from licensee officials concerning significant information. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to factors such as (1) the degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training, and experience; (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information; (3) the degree of intent or negligence, if any, involved; (4) the formality of the communication; (5) the reasonableness of NRC reliance on the information; (6) the importance of the information which was wrong or not provided; and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent at least careless disregard, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a licensee official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee and was not subsequently corrected in a timely manner.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a Notice of Violation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the licensee prior to reliance by the NRC, or before the NRC raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly

discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available or the advancement in technology was made, the initial submittal was corrected.

The failure to correct inaccurate or incomplete information which the licensee does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if the licensee later determines that the initial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected was recognized by a licensee as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the licensee's actions in not correcting or providing information raise questions about its commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. The Commission recognizes that enforcement determinations must be made on a case-by-case basis, taking into consideration the issues described in this section.

X. ENFORCEMENT ACTION AGAINST NON-LICENSEES

The Commission's enforcement policy is also applicable to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, quality assurance program approvals, or applicants for any of them, and to employees of any of the foregoing, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. The prohibitions and sanctions for any of these persons who engage in deliberate misconduct or knowing submission of incomplete or inaccurate information are provided in the rule on deliberate misconduct, e.g., 10 CFR 30.10 and 50.5.

Contractors who supply products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with licensees, suppliers may be required to have quality assurance programs that meet applicable requirements, e.g., 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Contractors supplying certain products or services to licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

When inspections determine that violations of NRC requirements have occurred, or that contractors have failed to fulfill contractual commitments (e.g., 10 CFR Part 50, Appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their contractors have programs that meet applicable requirements.

Notices of Violation will be issued for contractors who violate 10 CFR Part 21. Civil penalties will be imposed against individual directors or responsible officers of a contractor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(d)(1). Notices of Violation or orders will be used against non-licensees who are subject to the specific requirements of Parts 71 and 72. Notices of Nonconformance will be used for contractors who fail to meet commitments related to NRC activities but are not in violation of specific requirements.

XI. REFERRALS TO THE DEPARTMENT OF JUSTICE

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice (DOJ) for investigation. Referral to the DOJ does not preclude the NRC from taking other enforcement action under this policy. However, enforcement actions will be coordinated with the DOJ in accordance with the Memorandum of Understanding between the NRC and the DOJ, (53 FR 50317; December 14, 1988).

XII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

Enforcement actions and licensees' responses, in accordance with 10 CFR 2.790, are publicly available for inspection. In addition, press releases are generally issued for orders and civil penalties and are issued at the same time the order or proposed imposition of the civil penalty is issued. In addition, press releases are usually issued when a proposed civil penalty is withdrawn or substantially mitigated by some amount. Press releases are not normally issued for Notices of Violation that are not accompanied by orders or proposed civil penalties.

XIII. REOPENING CLOSED ENFORCEMENT ACTIONS

If significant new information is received or obtained by NRC which indicates that an enforcement sanction was incorrectly applied, consideration may be given, dependent on the circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the Deputy Executive Director.

SUPPLEMENTS - VIOLATION EXAMPLES

This section provides examples of violations in each of four severity levels as guidance in determining the appropriate severity level for violations in each of eight activity areas (reactor operations, Part 50 facility construction, safeguards, health physics, transportation, fuel cycle and materials operations, miscellaneous matters, and emergency preparedness).

SUPPLEMENT I--REACTOR OPERATIONS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of reactor operations.

A. *Severity Level I* - Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications being exceeded;

2. A system[12] designed to prevent or mitigate a serious safety event not being able to perform its intended safety function[13] when actually called upon to work;

3. An accidental criticality; or

4. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

B. *Severity Level II* - Violations involving for example:

1. A system designed to prevent or mitigate serious safety events not being able to perform its intended safety function;

2. A licensed operator involved in the use, sale, or possession of illegal drugs or the consumption of alcoholic beverages, within the protected area; or

3. A licensed operator at the control of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

C. *Severity Level III* - Violations involving for example:

1. A significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, in the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement; or

---

[12]The term "system" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

[13]"Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

(b) In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement.

2. A system designed to prevent or mitigate a serious safety event not being able to perform its intended function under certain conditions (e.g., safety system not operable unless offsite power is available; materials or components not environmentally qualified).

3. Inattentiveness to duty on the part of licensed personnel;

4. Changes in reactor parameters that cause unanticipated reductions in margins of safety;

5. A non-willful compromise of an application, test, or examination required by 10 CFR Part 55 that:

(a) In the case of initial operator licensing, contributes to an individual being granted an operator or a senior operator license, or

(b) In the case of requalification, contributes to an individual being permitted to perform the functions of an operator or a senior operator.

6. A licensee failure to conduct adequate oversight of contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

7. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation;

8. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

9. A failure to obtain prior Commission approval required by 10 CFR 50.59 for a change, in which the consequence of the change, is evaluated as having low to moderate, or greater safety significance (i.e., white, yellow, or red) by the SDP;

10. The failure to update the FSAR as required by 10 CFR 50.71(e) where the unupdated FSAR was used in performing a 10 CFR 50.59 evaluation for a change to the facility or procedures, implemented without prior Commission approval, that results in a condition evaluated as having low to moderate, or greater safety significance (i.e., white, yellow, or red) by the SDP; or

11. The failure to make a report required by 10 CFR 50.72 or 50.73 associated with any Severity Level III violation.

D. *Severity Level IV* - Violations involving for example:

1. A less significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, a 5 percent deficiency in the required volume of the condensate storage tank; or

(b) In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable;

2. A non-willful compromise of an application, test, or examination required by 10 CFR Part 55 that:

(a) In the case of initial operator licensing, is discovered and reported to the NRC before an individual is granted an operator or a senior operator license, or

(b) In the case of requalification, is discovered and reported to the NRC before an individual is permitted to perform the functions of an operator or a senior operator, or

(c) Constitutes more than minor concern.

3. A failure to meet regulatory requirements that have more than minor safety or environmental significance;

4. A failure to make a required Licensee Event Report;

5. Violations of 10 CFR 50.59 that result in conditions evaluated as having very low safety significance (i.e., green) by the SDP; or

6. A failure to update the FSAR as required by 10 CFR 50.71(e) in cases where the erroneous information is not used to make an unacceptable change to the facility or procedures.

E. *Minor* - Violations involving for example:

A failure to meet 10 CFR 50.59 requirements where there was not a reasonable likelihood that the change requiring 10 CFR 50.59 evaluation would ever require Commission review and approval prior to implementation. In the case of a 10 CFR 50.71(e) violation, where a failure to update the FSAR would not have a material impact on safety or licensed activities.

SUPPLEMENT II--PART 50 FACILITY CONSTRUCTION

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of Part 50 facility construction.

A. ***Severity Level I*** - Violations involving structures or systems that are completed[14] in such a manner that they would not have satisfied their intended safety related purpose.

B. ***Severity Level II*** **- Violations involving for example:**

1. A breakdown in the Quality Assurance (QA) program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). These deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

C. ***Severity Level III*** **- Violations involving for example:**

1. A deficiency in a licensee QA program for construction related to a single work activity (e.g., structural, piping, electrical, or foundations). This significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. A failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. A failure to make a required 10 CFR 50.55(e) report.

D. ***Severity Level IV*** - Violations involving failure to meet regulatory requirements including one or more Quality Assurance Criterion not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental significance.

---

[14]The term "completed" as used in this supplement means completion of construction including review and acceptance by the construction QA organization.

SUPPLEMENT III--SAFEGUARDS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of safeguards.

A. *Severity Level I* - Violations involving for example:

1. An act of radiological sabotage in which the security system did not function as required and, as a result of the failure, there was a significant event, such as:

(a) A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, was exceeded;

(b) A system designed to prevent or mitigate a serious safety event was not able to perform its intended safety function when actually called upon to work; or

(c) An accidental criticality occurred;

2. The theft, loss, or diversion of a formula quantity[15] of special nuclear material (SNM); or

3. Actual unauthorized production of a formula quantity of SNM.

B. *Severity Level II* - Violations involving for example:

1. The entry of an unauthorized individual[16] who represents a threat into a vital area[17] from outside the protected area;

2. The theft, loss or diversion of SNM of moderate strategic significance[18] in which the security system did not function as required; or

3. Actual unauthorized production of SNM.

---

[15]See 10 CFR 73.2 for the definition of "formula quantity."

[16]The term "unauthorized individual" as used in this supplement means someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

[17]The phrase "vital area" as used in this supplement includes vital areas and material access areas.

[18]See 10 CFR 73.2 for the definition of "special nuclear material of moderate strategic significance."

C. *Severity Level III* - Violations involving for example:

1. A failure or inability to control access through established systems or procedures, such that an unauthorized individual (i.e., not authorized unescorted access to protected area) could easily gain undetected access[19] into a vital area from outside the protected area;

2. A failure to conduct any search at the access control point or conducting an inadequate search that resulted in the introduction to the protected area of firearms, explosives, or incendiary devices and reasonable facsimiles thereof that could significantly assist radiological sabotage or theft of strategic SNM;

3. A failure, degradation, or other deficiency of the protected area intrusion detection or alarm assessment systems such that an unauthorized individual who represents a threat could predictably circumvent the system or defeat a specific zone with a high degree of confidence without insider knowledge, or other significant degradation of overall system capability;

4. A significant failure of the safeguards systems designed or used to prevent or detect the theft, loss, or diversion of strategic SNM;

5. A failure to protect or control classified or safeguards information considered to be significant while the information is outside the protected area and accessible to those not authorized access to the protected area;

6. A significant failure to respond to an event either in sufficient time to provide protection to vital equipment or strategic SNM, or with an adequate response force; or

7. A failure to perform an appropriate evaluation or background investigation so that information relevant to the access determination was not obtained or considered and as a result a person, who would likely not have been granted access by the licensee, if the required investigation or evaluation had been performed, was granted access.

D. *Severity Level IV* - Violations involving for example:

1. A failure or inability to control access such that an unauthorized individual (i.e., authorized to protected area but not to vital area) could easily gain undetected access into a vital area from inside the protected area or into a controlled access area;

2. A failure to respond to a suspected event in either a timely manner or with an adequate response force;

---

[19]In determining whether access can be easily gained, factors such as predictability, identifiability, and ease of passage should be considered.

3. A failure to implement 10 CFR Parts 25 and 95 with respect to the information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;

4. A failure to conduct a proper search at the access control point;

5. A failure to properly secure or protect classified or safeguards information inside the protected area that could assist an individual in an act of radiological sabotage or theft of strategic SNM where the information was not removed from the protected area;

6. A failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area but that was neither easily or likely to be exploitable;

7. A failure to conduct an adequate search at the exit from a material access area;

8. A theft or loss of SNM of low strategic significance that was not detected within the time period specified in the security plan, other relevant document, or regulation; or

9. Other violations that have more than minor safeguards significance.

SUPPLEMENT IV--HEALTH PHYSICS (10 CFR PART 20)

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of health physics, 10 CFR Part 20.[20]

A. *Severity Level I* - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 25 rems total effective dose equivalent, 75 rems to the lens of the eye, or 250 rads to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 2.5 rems total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 2.5 rems total effective dose equivalent, 7.5 rems to the lens of the eye, or 25 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

[20]Personnel overexposures and associated violations incurred during a life-saving or other emergency response effort will be treated on a case-by-case basis.

4. An annual exposure of a member of the public in excess of 1.0 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 50 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i); or

6. Disposal of licensed material in quantities or concentrations in excess of 10 times the limits of 10 CFR 20.2003.

B. *Severity Level II* - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 10 rems total effective dose equivalent, 30 rems to the lens of the eye, or 100 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 1.0 rem total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 1 rem total effective dose equivalent; 3.0 rems to the lens of the eye, or 10 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 0.5 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 10 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under §20.1301(c));

6. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.2003; or

7. A failure to make an immediate notification as required by 10 CFR 20.2202 (a)(1) or (a)(2).

C. *Severity Level III* - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 5 rems total effective dose equivalent, 15 rems to the lens of the eye, or 50 rems to the skin of the whole body or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 0.5 rem total effective dose equivalent (except when doses are in accordance with the provisions of §20.1208(d));

3. A radiation exposure during any year of a minor in excess of 0.5 rem total effective dose equivalent; 1.5 rems to the lens of the eye, or 5 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 0.1 rem total effective dose equivalent (except when operation up to 0.5 rem a year has been approved by the Commission under §20.1301(c));

5. A release of radioactive material to an unrestricted area at concentrations in excess of two times the effluent concentration limits referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

6. A failure to make a 24-hour notification required by 10 CFR 20.2202(b) or an immediate notification required by 10 CFR 20.2201(a)(1)(i);

7. A substantial potential for exposures or releases in excess of the applicable limits in 10 CFR 20.1001-20.2401 whether or not an exposure or release occurs;

8. Disposal of licensed material not covered in Severity Levels I or II;

9. A release for unrestricted use of contaminated or radioactive material or equipment that poses a realistic potential for exposure of the public to levels or doses exceeding the annual dose limits for members of the public;

10. Conduct of licensee activities by a technically unqualified person; or

11. A violation involving failure to secure, or maintain surveillance over, licensed material that:

(a) involves licensed material in any aggregate quantity greater than 1000 times the quantity specified in Appendix C to Part 20; or

(b) involves licensed material in any aggregate quantity greater than 10 times the quantity specified in Appendix C to Part 20, where such failure is accompanied by the absence of a functional program to detect and deter security violations that includes training, staff awareness, detection (including auditing), and corrective action (including disciplinary action); or

(c) results in a substantial potential for exposures or releases in excess of the applicable limits in Part 20.

D. *Severity Level IV* - Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.1201, 20.1207, or 20.1208 not constituting Severity Level I, II, or III violations;

2. A release of radioactive material to an unrestricted area at concentrations in excess of the limits for members of the public as referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under §20.1301(c));

3. A radiation dose rate in an unrestricted or controlled area in excess of 0.002 rem in any 1 hour (2 millirem/hour) or 50 millirems in a year;

4. Failure to maintain and implement radiation programs to keep radiation exposures as low as is reasonably achievable;

5. Doses to a member of the public in excess of any EPA generally applicable environmental radiation standards, such as 40 CFR Part 190;

6. A failure to make the 30-day notification required by 10 CFR 20.2201(a)(1)(ii) or 20.2203(a);

7. A failure to make a timely written report as required by 10 CFR 20.2201(b), 20.2204, or 20.2206;

8. A failure to report an exceedance of the dose constraint established in 10 CFR 20.1101(d) or a failure to take corrective action for an exceedance, as required by 10 CFR 20.1101(d);

9. Any other matter that has more than a minor safety, health, or environmental significance; or

10. A violation involving an isolated failure to secure, or maintain surveillance over, licensed material that is not otherwise characterized in Example IV.C.11 and that involves licensed material in any aggregate quantity greater than 10 times the quantity specified in Appendix C to Part 20, provided that: (i) the material is labeled as radioactive or located in an area posted as containing radioactive materials; and (ii) such failure occurs despite a functional program to detect and deter security violations that includes training, staff awareness, detection (including auditing), and corrective action (including disciplinary action).

E. *Minor* - Violations involving for example:

A violation involving an isolated failure to secure, or maintain surveillance over, licensed material in an aggregate quantity that does not exceed 10 times the quantity specified in Appendix C to Part 20.

SUPPLEMENT V--TRANSPORTATION

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of NRC transportation requirements.[21]

A. *Severity Level I* - Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that the material caused a radiation exposure to a member of the public and there was clear potential for the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 50 times the NRC limit; or

3. External radiation levels in excess of 10 times the NRC limit.

B. *Severity Level II* - Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that there was a clear potential for the member of the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 10, but not more than 50 times the NRC limit;

3. External radiation levels in excess of five, but not more than 10 times the NRC limit; or

4. A failure to make required initial notifications associated with Severity Level I or II violations.

C. *Severity Level III* - Violations involving for example:

---

[21]Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper and a carrier. When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

1. Surface contamination in excess of five but not more than 10 times the NRC limit;

2. External radiation in excess of one but not more than five times the NRC limit;

3. Any noncompliance with labeling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:

(a) A significant failure to identify the type, quantity, or form of material;

(b) A failure of the carrier or recipient to exercise adequate controls; or

(c) A substantial potential for either personnel exposure or contamination above regulatory limits or improper transfer of material; or

4. A failure to make required initial notification associated with Severity Level III violations.

D. *Severity Level IV* - Violations involving for example:

1. A breach of package integrity without external radiation levels exceeding the NRC limit or without contamination levels exceeding five times the NRC limits;

2. Surface contamination in excess of but not more than five times the NRC limit;

3. A failure to register as an authorized user of an NRC-Certified Transport package;

4. A noncompliance with shipping papers, marking, labeling, placarding, packaging or loading not amounting to a Severity Level I, II, or III violation;

5. A failure to demonstrate that packages for special form radioactive material meets applicable regulatory requirements;

6. A failure to demonstrate that packages meet DOT Specifications for 7A Type A packages; or

7. Other violations that have more than minor safety or environmental significance.

SUPPLEMENT VI--FUEL CYCLE AND MATERIALS OPERATIONS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of fuel cycle and materials operations.

A. *Severity Level I* - Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed 10 times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function;

3. A nuclear criticality accident;

4. Failure to use a properly prepared written directive as required by 10 CFR 35.40; or failure to develop, implement, or maintain procedures for administrations requiring a written directive as required by 10 CFR 35.41; that results in a death or serious injury (e.g., substantial organ impairment);

5. A safety limit, as defined in 10 CFR 76.4, the Technical Safety Requirements, or the application being exceeded; or

6. Significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not.

B. *Severity Level II* - Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event being inoperable;

3. A substantial programmatic failure to implement written directives or procedures for administrations requiring a written directive, such as a failure of the licensee's procedures to address one or more of the elements in 10 CFR 35.40 or 35.41, or a failure to train personnel in those procedures, that results in a medical event;

4. A failure to establish, implement, or maintain all criticality controls (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

5. The potential for a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not (e.g., movement of liquid UF_6 cylinder by unapproved methods).

C. *Severity Level III* - Violations involving for example:

1. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;

2. Use of radioactive material on humans where such use is not authorized;

3. Conduct of licensed activities by a technically unqualified or uncertified person;

4. A substantial potential for exposures, radiation levels, contamination levels, or releases, including releases of toxic material caused by a failure to comply with NRC regulations, from licensed or certified activities in excess of regulatory limits;

5. A substantial programmatic failure to implement written directives or procedures for administrations requiring a written directive, such as a failure of the licensee's procedures to address one or more of the elements in 10 CFR 35.40 or 35.41, or a failure to train personnel in those procedures, that does not result in a medical event. Failure to report a medical event. A programmatic weakness in the implementation of written directives or procedures for administrations requiring a written directive, whether or not a medical event occurs;

6. A failure, during radiographic operations, to have present at least two qualified individuals or to use radiographic equipment, radiation survey instruments, and/or personnel monitoring devices as required by 10 CFR Part 34;

7. A failure to submit an NRC Form 241 as required by 10 CFR 150.20;

8. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet the safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance;

9. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification;

10. A significant failure to comply with the action statement for a Technical Safety Requirement Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In an autoclave, where a containment isolation valve is inoperable for a period in excess of that allowed by the action statement; or

(b) Cranes or other lifting devices engaged in the movement of cylinders having inoperable safety components, such as redundant braking systems, or other safety devices for a period in excess of that allowed by the action statement;

11. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless utilities available, materials or components not according to specifications); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability;

12. Changes in parameters that cause unanticipated reductions in margins of safety;

13. A significant failure to meet the requirements of 10 CFR 76.68, including a failure such that a required certificate amendment was not sought;

14. A failure of the certificate holder to conduct adequate oversight of contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

15. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

16. A failure to establish, maintain, or implement all but one criticality control (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

17. A failure, during radiographic operations, to stop work after a pocket dosimeter is found to have gone off-scale, or after an electronic dosimeter reads greater than 200 mrem, and before a determination is made of the individual's actual radiation exposure.

D. *Severity Level IV* - Violations involving for example:

1. A failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental significance;

3. Failure to use a properly prepared written directive as required by 10 CFR 35.40; or failure to develop, implement, or maintain procedures for administrations requiring a written directive as required by 10 CFR 35.41, whether or not a medical event occurs, provided that the failures: (1) are isolated; (2) do not demonstrate programmatic weaknesses in implementation; and (3) have limited consequences if a medical event is involved;

4. A failure to keep the records required by 10 CFR 35.32 or 35.33;

5. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;

6. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

7. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2); or

8. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but could have been sufficient to result in a nuclear criticality.

SUPPLEMENT VII--MISCELLANEOUS MATTERS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations involving miscellaneous matters.

A. *Severity Level I* - Violations involving for example:

1. Inaccurate or incomplete information[22] that is provided to the NRC (a) deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety;

[22]In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference should also be made to the guidance in Section IX, "Inaccurate and Incomplete Information," and to the definition of "licensee official" contained in Section IV.C.

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of falsification by or with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;

3. Information that the licensee has identified as having significant implications for public health and safety or the common defense and security ("significant information identified by a licensee") and is deliberately withheld from the Commission;

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A knowing and intentional failure to provide the notice required by 10 CFR Part 21; or

6. A failure to substantially implement the required fitness-for-duty program.[23]

B. *Severity Level II* - Violations involving for example:

1. Inaccurate or incomplete information that is provided to the NRC (a) by a licensee official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the information on the part of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

3. "Significant information identified by a licensee" and not provided to the Commission because of careless disregard on the part of a licensee official;

4. An action by plant management or mid-level management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A failure to provide the notice required by 10 CFR Part 21;

[23]The example for violations for fitness-for-duty relate to violations of 10 CFR Part 26.

6. A failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area or take action for on duty misuse of alcohol, prescription drugs, or over-the-counter drugs;

7. A failure to take reasonable action when observed behavior within the protected area or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use;

8. A deliberate failure of the licensee's Employee Assistance Program (EAP) to notify licensee's management when EAP's staff is aware that an individual's condition may adversely affect safety related activities; or

9. The failure of licensee management to take effective action in correcting a hostile work environment.

C. *Severity Level III* - Violations involving for example:

1. Incomplete or inaccurate information that is provided to the NRC (a) because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. Inaccurate or incomplete performance indicator (PI) data submitted to the NRC by a Part 50 licensee that would have caused a PI to change from green to either yellow or red; white to either yellow or red; or yellow to red.

4. A failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation;

5. An action by first-line supervision or other low-level management in violation of 10 CFR 50.7 or similar regulations against an employee;

6. An inadequate review or failure to review such that, if an appropriate review had been made as required, a 10 CFR Part 21 report would have been made;

7. A failure to complete a suitable inquiry on the basis of 10 CFR Part 26, keep records concerning the denial of access, or respond to inquiries concerning denials of access so that, as a result of the failure, a person previously denied access for fitness-for-duty reasons was improperly granted access;

8. A failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for onsite alcohol use; not amounting to a Severity Level II violation;

9. A failure to assure, as required, that contractors have an effective fitness-for-duty program; or

10. Threats of discrimination or restrictive agreements which are violations under NRC regulations such as 10 CFR 50.7(f).

D. *Severity Level IV* - Violations involving for example:

1. Incomplete or inaccurate information that is provided to the NRC but not amounting to a Severity Level I, II, or III violation;

2. Information that the NRC requires be kept by a licensee and that is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation;

3. Inaccurate or incomplete performance indicator (PI) data submitted to the NRC by a Part 50 licensee that would have caused a PI to change from green to white.

4. An inadequate review or failure to review under 10 CFR Part 21 or other procedural violations associated with 10 CFR Part 21 with more than minor safety significance;

5. Violations of the requirements of Part 26 of more than minor significance;

6. A failure to report acts of licensed operators or supervisors pursuant to 10 CFR 26.73; or

7. Discrimination cases which, in themselves, do not warrant a Severity Level III categorization.

E. *Minor* - Violations involving for example:

Inaccurate or incomplete performance indicator (PI) data submitted to the NRC by a Part 50 licensee that would not have caused a PI to change color.

SUPPLEMENT VIII--EMERGENCY PREPAREDNESS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of emergency preparedness. It should be noted that citations are not normally made for violations involving emergency preparedness occurring during emergency exercises. However, where exercises reveal (i) training, procedural, or repetitive failures for which corrective actions have not been taken, (ii) an overall concern regarding the licensee's ability to implement its plan in a manner that adequately protects public health and safety, or (iii) poor self critiques of the licensee's exercises, enforcement action may be appropriate.

A. *Severity Level I* - Violations involving for example:

In a general emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff).

B. *Severity Level II* - Violations involving for example:

1. In a site emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. A licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. *Severity Level III* - Violations involving for example:

1. In an alert, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. A licensee failure to meet or implement one emergency planning standard involving assessment or notification.

D. *Severity Level IV* - Violations involving for example:

A licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.

INTERIM ENFORCEMENT POLICIES

Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material (10 CFR 31.5)

This section sets forth the interim enforcement policy that the NRC will follow to exercise enforcement discretion for certain violations of requirements in 10 CFR Part 31 for generally licensed devices containing byproduct material. It addresses violations that persons licensed pursuant to 10 CFR 31.5 identify and correct now, as well as during the initial cycle of the notice and response program contemplated by the proposed new requirements published in the Federal Register on December 2, 1998 (63 FR 66492), entitled "Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information".

Exercise of Enforcement Discretion

Under this interim enforcement policy, enforcement action normally will not be taken for violations of 10 CFR 31.5 if they are identified by the general licensee, and reported to the NRC if reporting is required, if the general licensee takes appropriate corrective action to address the specific violations and prevent recurrence of similar problems.

Exceptions

Enforcement action may be taken where there is: (a) failure to take appropriate corrective action to prevent recurrence of similar violations; (b) failure to respond and provide the information required by the notice and response program (if it becomes a final rule); (c) failure to provide complete and accurate information to the NRC; or (d) a willful violation, such as willfully disposing of generally licensed material in an unauthorized manner. Enforcement sanctions in these cases may include civil penalties as well as Orders to modify or revoke the authority to possess radioactive sources under the general license.

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fitness-for-Duty Issues (10 CFR Part 26)

This section sets forth the interim enforcement policy that the NRC will follow to exercise enforcement discretion for certain violations of requirements in 10 CFR Part 26, Fitness-for-Duty Programs that occur after December 30, 2002. The NRC will also exercise enforcement discretion and normally not pursue past violations for insufficient suitable inquiries (where licensees failed to contact employers when individuals had worked for employers for less than 30 days) and past violations for failures to perform pre-access drug tests (where individuals were subject to a FFD program within the last 30 days) that occurred prior to December 30,2002. The policy, subject to subsequent Commission-approved associated policy, guidance, or regulation, is in effect until a final revision of 10 CFR Part 26 is issued and becomes effective.

Suitable Inquiry

The regulation in 10 CFR 26.3 requires that before granting an individual unescorted access, a licensee must conduct a suitable inquiry consisting of a "best-effort verification of employment history for the past five years, but in no case less than three years, obtained through contacts with previous employers to determine if a person was, in the past, tested positive for illegal drugs, subject to a plan for treating substance abuse, removed from, or made ineligible for activities within the scope of 10 CFR Part 26, or denied unescorted access at any other nuclear power plant or other employment in accordance with a fitness-for-duty policy."

The requirement does not provide an exception when an individual is reinstated at a licensee facility or transferred within a licensee corporation or to another licensee where there is little or no interruption in authorization. The term, “authorization,” refers to a period during which an individual maintained unescorted access or was assigned to perform activities within the scope of Part 26. However, enforcement action will not normally be taken for failure to contact interim employers, if the following practice is adopted:

If the individual applicant’s authorization has been interrupted for 30 calendar days or less and the individual’s last authorization was terminated favorably, before granting authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of Part 26, the licensee shall obtain and verify that a self-disclosure (i.e., a report of any drug- or alcohol-related arrests) for the period since the last authorization contains no potentially disqualifying FFD information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption. Potentially disqualifying FFD information means information demonstrating that an individual has, during the period authorization was interrupted:

(1) Violated an employer’s drug and alcohol testing policy;
(2) Used, sold, or possessed illegal drugs;

(3) Abused legal drugs;
(4) Subverted or attempted to subvert a drug or alcohol testing program;
(5) Refused to take a drug or alcohol test;
(6) Been subjected to a plan for substance abuse treatment (except for self-referral); or
(7) Had legal or employment action taken for alcohol or drug use.

The licensee shall also ensure that the individual has met FFD refresher training requirements.

The requirements also do not provide an exception for each licensee to conduct a suitable inquiry into an individual applicant's past five years of employment when an individual is reinstated at a licensee facility or transferred to another licensee facility. However, enforcement action will not normally be taken for failure to contact employers from the past five years, if the following practice is adopted:

Licensees may rely upon the information gathered by previous licensees regarding an individual applicant's past five years of employment to meet the suitable inquiry requirement.

The NRC may take enforcement action when a licensee does not follow these practices.

Pre-access Testing

The regulation in 10 CFR 26.24(a)(1) requires that a person be tested for drugs and alcohol "within 60 days prior to the initial granting of unescorted access to protected areas."

The requirement does not provide an exception when an individual is reinstated at a licensee facility or transferred within a licensee corporation or to another licensee where there is little or no interruption in authorization. However, enforcement action will not normally be taken for failure to conduct a pre-access test for alcohol and drugs, if the following practice is adopted:

If the individual applicant's authorization has been interrupted for 30 calendar days or less and the individual's last authorization was terminated favorably, in order to grant authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of Part 26, the licensee shall:

(1) Obtain and verify that a self-disclosure for the past 30 days reveals no potentially disqualifying information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption; and
(2) Ensure that the individual has met FFD refresher training requirements.

If the individual applicant's authorization has been interrupted for 31 days to 60 days and the individual's last authorization was terminated favorably, in order to grant authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of Part 26, the licensee shall:

(1) Obtain and verify that a self-disclosure for the period since the last authorization contains no potentially disqualifying FFD information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption;

(2) Within 5 working days of granting authorization, complete a suitable inquiry for the period since last authorization was terminated, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption;

(3) Verify that results of an alcohol test are negative and collect a specimen for drug testing, unless either a drug and alcohol test meeting the standards of Part 26 was performed within the past 60 days and results were negative or the individual was subject to a licensee-approved Part 26 FFD program that included random drug and alcohol testing throughout the period of interruption; and

(4) Ensure that the individual has met FFD refresher training requirements.

The NRC may take enforcement action when a licensee does not follow these practices.

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

This section sets forth the interim enforcement policy that the NRC will follow to exercise enforcement discretion for certain violations of requirements in 10 CFR 50.48, Fire protection (or fire protection license conditions) that are identified as a result of the transition to a new risk-informed, performance-based fire protection approach included in paragraph (c) of 10 CFR 50.48 and for certain existing identified noncompliances that reasonably may be resolved by compliance with 10 CFR 50.48(c). Paragraph (c) allows reactor licensees to voluntarily comply with the risk-informed, performance-based fire protection approaches in National Fire Protection Association (NFPA) Standard 805 (NFPA 805), "Performance-Based Standard For Fire Protection For Light Water Reactor Electric Generating Plants," 2001 Edition (with limited exceptions stated in the rule language).

For those noncompliances identified during the licensee's transition process, this enforcement discretion policy will be in effect for up to two years from the date of a licensee's letter of intent to adopt the requirements in 10 CFR 50.48(c) and will continue to be in place until NRC approval of the license amendment request to transition to 10 CFR 50.48(c). This discretion policy may be extended upon a request from the licensee with adequate justification.

If, after submitting the letter of intent to comply with 10 CFR 50.48(c) and before submitting the license amendment request, the licensee determines not to complete the transition to 10 CFR 50.48(c), the licensee must submit a letter stating their intent to retain their existing license basis and withdrawing their letter of intent to comply with 50.48(c). Any violations identified prior to the date of the above withdrawal letter will be eligible for discretion, provided they are resolved under the existing licensing basis and meet the criteria included in this policy for these violations. Violations identified after the date of the above withdrawal letter will be dispositioned in accordance with normal enforcement practices.

A. Noncompliances Identified During the Licensee's Transition Process

Under this interim enforcement policy, enforcement action normally will not be taken for a violation of 10 CFR 50.48(b) (or the requirements in a fire protection license condition) involving a problem such as in engineering, design, implementing procedures, or installation, if the violation is documented in an inspection report and it meets all of the following criteria:

(1) It was licensee-identified as a result of its voluntary initiative to adopt the risk-informed, performance-based fire protection program included under 10 CFR 50.48(c) or, if the NRC identifies the violation, it was likely in the NRC staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's transition to 10 CFR 50.48(c) provided the schedule reasonably provides for completion of the transition within two years of the date of the licensee's letter of intent to implement 10 CFR 50.48(c) or other period granted by NRC;

(2) It was corrected or will be corrected as a result of completing the transition to 10 CFR 50.48(c). Also, immediate corrective action and/or compensatory measures are taken within a reasonable time commensurate with the risk significance of the issue following identification (this action should involve expanding the initiative, as necessary, to identify other issues caused by similar root causes);

(3) It was not likely to have been previously identified by routine licensee efforts such as normal surveillance or quality assurance (QA) activities; and

(4) It was not willful.

The NRC may take enforcement action when these conditions are not met or when a violation that is associated with a finding of high safety significance is identified.

While the NRC may exercise discretion for violations meeting the required criteria where the licensee failed to make a required report to the NRC, a separate enforcement action will normally be issued for the licensee's failure to make a required report.

B. Existing Identified Noncompliances

In addition, licensees may have existing identified noncompliances that could reasonably be corrected under 10 CFR 50.48(c). For these noncompliances, the NRC is providing enforcement discretion for the implementation of corrective actions until the licensee has transitioned to 10 CFR 50.48(c) provided that the noncompliances meet all of the following criteria:

(1) The licensee has entered the noncompliance into their corrective action program and implemented appropriate compensatory measures,

(2) The noncompliance is not associated with a finding that the Reactor Oversight Process Significance Determination Process would evaluate as Red, or it would not be categorized at Severity Level I,

(3) The licensee submits a letter of intent by December 31, 2005, stating its intent to transition to 10 CFR 50.48(c).

After December 31, 2005, as addressed in (3) above, this enforcement discretion for implementation of corrective actions for existing identified noncompliances will not be available and the requirements of 10 CFR 50.48(b) (and any other requirements in fire protection license conditions) will be enforced in accordance with normal enforcement practices.

Interim Enforcement Policy Regarding the Use of Alternative Dispute Resolution

I. Introduction

A. Background

This section sets forth the interim enforcement policy that the NRC will follow to undertake a pilot program testing the use of Alternative Dispute Resolution (ADR) in the enforcement program.

B. Scope

The pilot program scope consists of the trial use of ADR for cases involving: (1) alleged discrimination for engaging in protected activity prior to an NRC investigation; and (2) both discrimination and other wrongdoing cases after the Office of Investigations has competed an investigation. Specific points in the enforcement process where ADR may be requested are specified below. Mediation will be the form of ADR typically utilized. Certain cases may only require facilitation, a process where the neutral's function is primarily to support the communication process rather than focusing on the parties reaching a settlement.

Note: Although the NRC's ADR program may cause the parties to negotiate issues which may also form the basis for a claim under Section 211 of the Energy Reorganization Act of 1974, as amended, the Department of Labor's (DOL) timeliness requirements for filing a claim are in no way altered by the NRC's program.

In cases involving an allegation of discrimination, any underlying technical issue will be treated as a separate issue, or concern, within the allegation program. The allegation program will be used to resolve concerns (typically safety concerns) and issues other than the discrimination complaint.

II. General

A. Responsibilities and Program Administration

The Director, OE, is responsible for the overall program. In addition, the Director, OE, will serve as the lead NRC negotiator for cases involving discrimination after OI completes an investigation. The Director, OE, may also designate the Deputy Director, OE, to act as the lead negotiator.

Regional Administrators are designated as the lead NRC negotiator for cases involving wrongdoing other than discrimination. The Regional Administrator may designate the Deputy Regional Administrator to act as the lead negotiator or the Director or Deputy Director, OE, may also serve as the lead negotiator for other wrongdoing cases.

The Program Administrator will provide program oversight and support for each region and headquarters program offices. Program and neutral evaluations will be provided to the Program Administrator. The Program Administrator may serve as the intake neutral for post investigation ADR. An ``intake neutral'' develops information and processes information for mediation. As an intake neutral, the confidentiality provisions discussed below will apply.

The Office Allegation Coordinators (OACs) are normally a complainant's first substantive contact when a concern regarding discrimination is raised. As such, the OACs may serve as an intake neutral who develops information and processes the necessary information for mediation under Early ADR. The OAC has the option to refer the whistleblower to the third party neutral to process the necessary information for mediation under Early ADR. The confidentiality provisions in Section II.B.7 will apply to the OAC, third party intake neutral, and Program Administrator. The OAC will also process documentation necessary to operate the program.

B. General Rules/Principles

Unless specifically addressed in a subsequent section, the rules described in this section apply generally throughout the ADR program, regardless of where in the overall enforcement process the ADR sessions occur.

1. *Voluntary*. Use of the NRC ADR program is voluntary, and any participant may end the mediation at any time. The goal is to obtain an agreement satisfactory to all participants on issues in controversy.

2. *Neutral qualification*. Generally, a neutral should be knowledgeable and experienced with nuclear matters or labor and employment law. However, any neutral that is satisfactory to the parties is acceptable.

3. *Roster of neutrals*. OE will maintain a list of organizations from which services of neutrals could be obtained. The parties may select a mediator from any of these organizations; however, the parties are not required to use the organizations provided and any neutral mutually agreeable to the parties is acceptable.

4. *Mediator selection*. If the parties have not selected a mediator within fourteen days, the Program Administrator or OAC may propose a mediator for the parties' consideration.

5. *Neutrality*. Mediators are neutral. The role of the mediator is to provide an environment where all participants will have an opportunity to resolve their differences. The parties should each consult an attorney or other professional if any question of law, content of a proposed agreement on issues in controversy, or other issues exists.

   For Early ADR, the OAC or third party neutral will serve as an intake neutral. Should any party seek to discuss the NRC's enforcement ADR process in detail, the party should be referred to the OAC or third party neutral. The OAC will initiate discussion of the option to mediate and process the necessary documentation. Subsequently, for post investigation ADR, the program administrator or third party neutral will serve as the intake neutral. Due to the nature of conversations that typically occur between an intake neutral and the parties, these conversations will also be considered confidential.

6. *Mediation sessions*. Once selected by the parties and contracted by the OAC or third party intake neutral, the mediator will promptly contact each of the parties to discuss the mediation process under the Program, reconfirm party interest in proceeding, establish a date and location for the mediation session and obtain any other information s/he believes likely to be useful. The mediator will preside over all mediation sessions, and will be expected to complete the mediation within 90 days after referral unless the parties, and the NRC if not a party, agree otherwise. At the conclusion of the mediation, parties will be asked to fill out and submit an evaluation form for the mediator that will be sent to the Program Administrator.

   Normally, a settlement is expected to be reached and signed within 90 days from when the parties agree to attempt ADR. A principal reason for Early ADR is the quick resolution of the claim, thereby improving the safety conscious work environment (SCWE). If the parties cannot agree to a settlement within 90 days, the NRC must assume a settlement will not be reached and continue with the investigation and enforcement process. Where good cause is shown and all parties agree, the NRC may allow a small extension to the 90 day limit to allow for completion of a settlement agreement.

   Settlement agreements in Early ADR will not be final until 3 days after the agreement has been signed. Either party may reconsider the settlement

agreement during the 3 day period. Subsequent concerns regarding implementation of the settlement agreement should be directed to the neutral, or if necessary, the OAC.

7. *Confidentiality*. The mediator will specifically inform all parties and other attendees that all mediation activities under the Program are subject to the confidentiality provisions of the Administrative Dispute Resolution Act, 5 U.S.C. 574; the Federal ADR Council's guidance document entitled "Confidentiality in Federal ADR Programs;" and the explicit confidentiality terms set forth in the Agreement to Begin Voluntary Mediation signed by the parties. The mediator will explain these confidentiality terms and offer to answer questions regarding them.

8. *Good Faith*. All participants will participate in good faith in the mediation process and explore potentially feasible options that could lead to the management or resolution of issues in controversy.

9. *Not legal representation*. A mediator is not a legal representative or legal counsel. The mediator will not represent any party in the instant case or any future proceeding or matter relating to the issues in controversy in this case. The mediator is not either party's lawyer and no party should rely on the mediator for legal advice.

10. *Mediator Fees*. If Early ADR (defined below) is utilized, the NRC, subject to the availability of funds, will pay the mediator's entire fee. For cases where a licensee requests ADR subsequent to the completion of an OI report, the licensee requesting ADR will pay half of the mediator's fee and the NRC, subject to the availability of funds, will pay half. The NRC will recover the mediator fees it pays through annual fees assessed to licensees under 10 CFR Part 171.

11. *Exceptions*. The only exception to the offering of Early ADR by the NRC will be abuse of the program, e.g., a large number of repetitive requests for ADR by a particular facility, contractor, or whistleblower. Should the NRC believe the ADR program has been abused in some manner by one of the parties potentially involved, the Director, OE will be notified.

    To maximize the potential use of the ADR pilot program, for cases after an OI investigation is completed, the NRC will at least consider negotiating a settlement with a licensee for any wrongdoing case if requested. However, there may be certain circumstances where it may not be appropriate for the NRC to engage in ADR.

12. *Number of settlement attempts*. Each case will be afforded a maximum of two attempts to reach a settlement on the same underlying issue through the use of ADR. An ``attempt" is defined as one or more mediated sessions conducted at a specific point in the NRC's enforcement process (generally within a 90 day period). However, in general, settlement at any time without the use of a neutral is not precluded by the ADR program.

13. *Finality*. Cases that reach a settlement (and are acceptable to the NRC), either in Early ADR or after an OI investigation is complete, constitute a final enforcement decision on the case by the NRC.

III. ADR Opportunities

A. Licensee Sponsored Programs

Licensees are encouraged to develop ADR programs of their own for use in conjunction with an employee concerns type program. If an employee who alleges retaliation for engaging in protected activity utilizes a licensee's program to settle the discrimination concern, either before or after contacting the NRC, the licensee may voluntarily report the settlement to the NRC as a settlement within the NRC's jurisdiction. If notified of the settlement prior to initiation of an investigation, the NRC will review the settlement for restrictive agreements potentially in violation of 10 CFR 50.7(f), or other, similar regulations. Assuming no such restrictive agreements exist, the NRC will not investigate or take enforcement action.

B. Early ADR

The term "Early ADR" refers to the use of ADR prior to an OI investigation. The parties to Early ADR will normally be the complainant and the licensee. If the complainant is an employee of a licensee contractor, the parties will be the complainant and the contractor. Generally, the Early ADR process will parallel and work in conjunction with the NRC allegation program.

The allegation process will be used through the determination of a prima facie case. If an Allegation Review Board (ARB) determines a prima facie case exists, the ARB will normally recommend the parties be offered the opportunity to use Early ADR. Exceptions to such a recommendation should be rare and be based solely on an identified and articulated abuse of the ADR process by a party who would be involved in the case under consideration. Exceptions will be approved by the Director, OE, prior to initiating an investigation based on denial of ADR.

Early ADR cases will be tracked in the Allegation Management System (AMS). However, the allegation process timeliness measurement will be stayed once the ARB determines that ADR should be offered until the point in time ADR is declined by either party or the case is settled.

When an agreement is reached, the mediator will record the terms of that agreement. The parties may sign the agreement at the mediation session, or any party may review the agreement with his/her attorney before the document is placed in final form and signed. However, as noted above, settlement agreements in Early ADR will not be final until at least 3 days after the agreement has been signed. No participant will hold the NRC liable for the results of the mediation, whether or not a resolution is reached.

A settlement agreement between the parties will be reviewed by the NRC. OE will coordinate the review with the Office of the General Counsel (OGC). The review will ensure that no restrictive agreements in violation of 10 CFR 50.7(f) or other NRC regulations are contained in the settlement and will normally be completed within 5 working days of receipt. Given an acceptable settlement, the NRC will not investigate or take enforcement action.

The NRC expects that parties to Early ADR will agree to some form of confidentiality. However, that agreement cannot extend to the reporting of any safety concerns potentially discussed during the ADR sessions if one of the parties desires to report the concern. Either party may report safety concerns discussed during ADR sessions to the NRC without regard to confidentiality agreements. Safety concerns and their disposition may be discussed between the parties if desired. In cases where an Early ADR negotiation is between a licensee contractor and the contractor's employee, the NRC expects the contractor to ensure the licensee is aware of any safety issues discussed during the negotiations.

In addition to the settlement agreement, the licensee should provide the NRC with any planned or completed actions relevant to the safety conscious work environment that the licensee has determined to be appropriate.

Generally no press release or other public announcement will be made by the NRC for cases settled by early ADR. However, all documents, including the proposed settlement agreement, submitted to the NRC will be official agency records, and while not generally publicly available, still subject to the Freedom of Information Act (FOIA).

Documents associated with processing an Early ADR case will not generally be publicly available, consistent with the allegation program. However, documents

may be subject to the FOIA and may be released, subject to redaction, pursuant to a FOIA request.

Some negotiations may fail to settle the case. When a settlement is not reached, the appropriate intake neutral will be notified, typically by the mediator, and an ARB will determine the appropriate action in accordance with the allegation program.

C. Post-Investigation ADR

Post-investigation ADR refers to the use of ADR anytime after an OI investigation is complete and an enforcement panel concludes that pursuit of an enforcement action appears warranted. Generally, post- investigation ADR processes will parallel and work in conjunction with the NRC enforcement program.

After an investigation is complete, there are generally three issues that can be resolved using ADR; whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions for the violation(s). If the parties agree, any or all three may be considered in an ADR session.

Two different types of enforcement cases will be eligible for ADR after an investigation is complete, discrimination and other wrongdoing cases. ADR will normally be considered at three places in the enforcement process after OI has completed an investigation: (1) After an enforcement panel has concluded there is the need to continue pursuing potential enforcement action based on an OI case and prior to the conduct of a predecisional enforcement conference (PEC); (2) after the initial enforcement action is taken, typically a Notice of Violation (NOV) and potentially a proposed civil penalty; and (3) after imposition of a civil penalty and prior to a hearing request.

The parties to an ADR session after an OI investigation is complete will be the licensee and the NRC. Fees associated with the neutral will typically be divided between the NRC and the licensee, with each paying half of the total cost.

Settlement discussions are expected to be complete within 90 days of initiating ADR prior to a PEC. The NRC may withdraw from settlement discussions if negotiations have not been completed in a timely manner.

The terms of a settlement agreement will normally be confirmed by order. Typically, the specific terms of settlement will be agreed to during the negotiation. The staff will then incorporate appropriate terms into a confirmatory order, a draft of which will then be agreed to by the licensee prior to issuance.

If an attempt to resolve a case using ADR prior to the conduct of a PEC fails, a predecisional enforcement conference will normally be offered to the licensee. The PEC will be conducted as described in the Enforcement Policy.

For cases within the scope of the pilot program, after a panel concludes that a case warrants continuation of the enforcement process, the responsible region or office will contact the licensee and offer either a PEC or ADR. Consistent with the Enforcement Policy, a written response could be offered at the staff's discretion.

Public notification of the settlement will normally be a press release and the confirmatory order will be published in the *Federal Register*.

Confidentiality with the NRC as a party will be determined by the parties as allowed by the ADR Act.

1. Discrimination Cases

   Consistent with centralization of the discrimination enforcement process, the Director, Office of Enforcement, will normally negotiate for the NRC.

   Normally the NRC will coordinate participation of the complainant. While the complainant will not be a party to the ADR process after OI issues an investigation report, the NRC will typically seek the complainant's input to the process. Normally, the NRC will at least seek input from the complainant regarding suggested corrective actions aimed at improving the safety conscious work environment.

   OI reports (not including exhibits) will normally be provided to the licensee when the choice of ADR or a PEC is offered.

   A licensee may request ADR for discrimination violations based solely on a finding by DOL. However, the staff will not negotiate the finding by DOL. The appropriate enforcement sanction and corrective actions will be the typical focus of settlement discussions.

2. Other Than Discrimination Wrongdoing

   The regional administrator will normally be the principal negotiator for the NRC in ADR sessions on other wrongdoing cases. After imposition of a civil penalty or other order, the Director, Office of Enforcement and applicable regional administrator may determine that the Director would be the appropriate negotiator.

Typically, an enforcement panel will be conducted to discuss the NRC's specific interests in the case prior to the regional administrator attending the settlement discussions. A limited review of the settlement terms may be conducted in conjunction with the preparation of the confirmatory order.

The OI report will not routinely be offered to the licensee prior to ADR. However, the OI report may be provided, as necessary, during the negotiations with the licensee.

IV. Integration With Traditional Enforcement Policy

A. Potential Future Enforcement Actions Civil Penalty Assessments

Section VI.C.2 of the Enforcement Policy provides the method for determination of a civil penalty amount. One aspect of the determination uses enforcement history as a factor. If the staff considers a civil penalty for a future escalated enforcement action, settlements under the enforcement ADR program occurring after a formal enforcement action is taken (e.g. an NOV is issued) may count as an enforcement case for purposes of determining whether identification credit is considered. Settlements occurring prior to an OI investigation will not count as previous enforcement. The status of settlement agreements occurring after an investigation is completed but prior to an NOV being issued will be established as part of the negotiation between the parties.